THE CORPORATION OF CERTIFIED SECRETARIES

Manual on

THE LAW OF MEETINGS

THEIR CONDUCT AND PROCEDURE

By

SEBAG SHAW, LL.B.
(of Grays Inn, Barrister-at-Law)

and

H. A. R. J. WILSON, F.C.A.
F.S.A.A., F.C.C.S.

PREFACE

THE object of this book is to provide a comprehensive survey of the rules, legal and conventional, which regulate the constitution and conduct of meetings. An effort has been made to present the subject-matter in its logical development from general custom and Common Law to the special and often intricate regulations which are peculiar to particular bodies. Where the source of a rule or principle is not manifest, its *raison d'être* has been indicated, i.e., expediency, equity, and so on.

This book should thus be of value not only as a work of reference but also to the layman, and especially as a text-book for the student whose needs have been kept always in mind.

Part I reviews the Law of Meetings from its external aspect, and deals with such matters as the so-called Rights of Meeting and Right of Free Speech. In Part II are considered the rules which govern Meetings in general from their internal aspect, as for example voting rights, resolutions, amendments and the like. Part III is concerned with the special rules affecting Companies under the *Companies Act*, 1929, while Part IV deals similarly with Local Authorities. In Part V the meetings of miscellaneous bodies are investigated including, in particular, those of Statutory Companies.

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SEBAG SHAW.
H. A. R. J. WILSON.

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PART I

COMMON LAW AND GENERAL REGULATION

CHAPTER I

INTRODUCTION: NATURE OF ASSEMBLIES

THE word "meeting" is susceptible of many interpretations, but in one of its more specific senses it indicates an assembly of persons. Such an assembly may arise in circumstances infinitely diverse in their character and combination. It may be fortuitous and casual or organised and contrived, and its objects may be as various as are the interests which are common to the generality of mankind. An assembly may foregather for the purpose of discussion or social intercourse, for entertainment, in order to indulge an aesthetic interest, to receive instruction, or to participate in the administration of public or private affairs.

§ 1. **Scope of the Law of Meetings.** Every meeting is subject to the law, in that if any unlawful act be committed by any member of an assembly he may be called to account for the consequences of that act. This principle is not, of course, peculiar to unlawful acts done at a meeting, but is of universal application. It is, however, to be expected that where people assemble with some common object in view, their collective conduct should be regulated by rules extending beyond those which would affect each member of the assembly in his individual and separate capacity.

The public interest requires such regulation inasmuch as the united strength of an assembly may be a source of detriment to the community; and expediency requires it if an assembly is to accomplish expeditiously, or at all, the purposes for which it was convened.

The first requirement has given rise to legal rules of general application which have emerged out of the Common Law, or have been promulgated by Act of Parliament, while the second requirement has resulted in the development of conventional rules for the regulation of the procedure at meetings and in the creation of legal rules of particular application appropriate to the nature and objects of particular assemblies.

An assembly which is organised to promote some ephemeral interest such as entertainment or conviviality does not and does not need to attract to its conduct legal regulations affecting the component members of the gathering apart from those rules of law which govern each member in his personal character, and which, for example, render him

liable to prosecution and punishment if he should commit a breach of the peace or an assault.

The Law of Meetings is accordingly confined to those principles which in our legal system are germane to the regulation of assemblies whose purpose is either the consideration of matters of general public concern, or the administration of material affairs affecting local or private interests held in common by the members of those assemblies.

§ 2. **Classification of Meetings.** Within the limited sense which has been defined, meetings may be divided into:—

(i) *Public meetings*, i.e. those to which the generality of the public have access. Such meetings will, in the nature of things, be concerned with matters of general interest.

(ii) *Private meetings*, i.e. those to which persons are admitted only by virtue of some specific right or special capacity, as, for example, a meeting of shareholders in a company or of the aldermen of a borough.

A characteristic distinction between public and private meetings will be at once apparent. The component members of a private meeting will be related by a common and direct interest in the matters to be deliberated, and this relationship will determine the constitution of the meeting itself. We shall find accordingly that such meetings are largely governed by prescribed regulations depending upon and sometimes peculiar to the particular connection subsisting between those who are entitled to attend them. These regulations may be defined by Contract, as in the case of a club, or by Statute, as in the case of a district council, or in part by Contract and in part by Statute, as in the case of a registered company. It is thus only where contractual or statutory provision is deficient in regulating a particular aspect of a private meeting, that the Common Law will become operative to govern that particular matter.

In the case of a public meeting the common interest of those who attend may be not less profound, but it will be, on the other hand, indirect. There is absent that element of specific relationship between the persons who attend which lends itself to particular and definitive regulation. It follows that the organisation and conduct of a public meeting will be governed by the General Law—i.e., by rules evolved out of the Common Law as modified and expanded by general Acts of Parliament evoked from time to time by the necessity, in the public interest, to control certain forms of public activity and to preserve the public peace and order.

§ 3. **Public Meetings.** Common Law owed much of its vitality to avoidance of definition, and we must look to the *Law of Libel Amendment Act*, 1888, for a statement as to what constitutes a public meeting. For the purposes of that Act, it includes " any meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether the admission thereto be general or restricted."

It will be observed that the above definition comprises:—

(a) Meetings held in a public place;

(b) Meetings held in a private place in regard to matters of public interest, and

(c) Meetings held in a private place and subject to a right to exclude persons.

On the other hand, the definition does not include:—

(a) Meetings not lawfully held;

(b) Meetings held for an unlawful purpose; and

(c) Meetings not related to any matter of public concern.

The statutory definition here adopted is, of course, founded upon Common Law conceptions, and its scope and limitations provide a convenient basis for an analysis of the Common Law principles affecting public meetings.

It is in the first place manifest that a meeting which is in itself unlawful cannot be subject to legal regulations affecting its conduct apart from the rule of law which renders the meeting unlawful and expressly or implicitly prohibits it. So far as such meetings are concerned it is therefore requisite only to ascertain when and in what circumstances they violate the prohibitions of the law. Secondly, having eliminated those assemblies which are intrinsically unlawful, it is necessary to consider the status and the rights of persons who are members of those public assemblies which are within the limits of the law.

We must accordingly inquire into (i) what constitutes an illegal assembly, and (ii) the nature and extent of the right of public meeting.

§ 4. **Illegal Assemblies.** It will be seen later that English law does not recognise any positive right of meeting in public places; that right, so far as it can be said to exist at all, is delimited by recounting the specific circumstances in which an assembly will transgress the permissions of the law. The expression " illegal assemblies " is used as a general description of all meetings which offend the law by falling within one or other of the following classes:

(a) Unlawful Assembly.

Not every meeting with an unlawful purpose constitutes an unlaw-

ful assembly. If, for example, a dozen men meet in a room to devise a scheme of fraud, they assemble for an unlawful purpose and yet are not an unlawful assembly. That expression has acquired a specific significance in English law and denotes the situation which exists "whenever as many as three persons meet together to support each other even against opposition in carrying out a purpose which is likely to involve violence or to produce in the minds of their neighbours any reasonable apprehension of violence" (*Field* v. *The Receiver for the Metropolitan Police District*, 1907, L.R. 2 K.B. 853). Consideration of this definition will show that while, as has been already stated, not every meeting with an unlawful object is an unlawful assembly, so also the mere fact that the purpose of a meeting is legal will not of itself prevent it from constituting an unlawful assembly. The essential test is whether the character and circumstances of the meeting are likely to provoke a breach of the peace. In *Beatty* v. *Gillbanks* (1882) 9 Q.B.D. 308, the defendants were members of the Salvation Army who were charged with having "unlawfully and tumultuously assembled to the disturbance of the public peace." The evidence showed that previous meetings of that body had produced considerable public disorder, in consequence of which the local Justices of the Peace had issued a notice forbidding persons from "assembling to the disturbance of the public peace in the public streets within the said parish of Weston-super-Mare." Notwithstanding this order, a meeting of the Salvation Army, perfectly lawful in itself, was organised by one Beatty, and there resulted a recurrence of those disorders which had given rise to the prohibition. The existence of the order of the Justices of the Peace would not, without anything more, render the meeting an unlawful assembly. Beatty and others associated with him, were, however, charged with that Common Law offence upon the ground that their meeting had produced a breach of the peace, and that, in the known conditions of antagonism in the locality, a breach of the peace was the natural consequence of a meeting of the Salvation Army, and was accordingly to be regarded as having been contemplated and intended by those responsible for the meeting. It was ultimately held that it was not a natural consequence of the doing of a lawful act that unlawful acts should be committed by other persons, even though the person doing the lawful act had grounds for apprehending that it would encourage the unlawful acts.

The decision has been adversely criticised and can now be supported only upon the view taken by the Court of the particular facts. "The principle underlying the decision in *Beatty* v. *Gillbanks* seems to be that an act innocent in itself, done with innocent intent and reasonably incidental to the performance of a duty, to the carrying on of business,

to the enjoyment of legitimate recreation, or generally to the exercise of a legal right, does not become criminal because it may provoke persons to break the peace or otherwise conduct themselves in an illegal way. The point actually decided was that (on the proved facts) the defendants in that case had not committed a misdemeanour" (*Reg.* v. *Justices of Londonderry*, 1891, 28 L.R. 440).

In *Wise* v. *Dunning* (1902) 1 K.B. 167, the appellant, a Protestant lecturer, had held meetings in public places in Liverpool causing large crowds to collect and obstruct the thoroughfares. In addressing those meetings he used gestures and language which were highly offensive to the religion of the Roman Catholic inhabitants. The natural consequence of his words and conduct on those occasions was to cause, and his words and conduct did in fact cause, breaches of the peace to be committed by his opponents and supporters. The appellant announced at one of the meetings that he had been informed that the Catholics were going to bring sticks, but that he purposed to hold the meeting and that he looked to his supporters for protection. A local Act in force in Liverpool prohibits under penalty the use of threatening, abusive and insulting words and behaviour in the streets whereby a breach of the peace may be occasioned. It was decided that on proof of these facts the magistrate had jurisdiction to bind over the appellant in recognisances to be of good behaviour.

This decision is not easily reconciled with *Beatty* v. *Gillbanks*. It would seem that the respective facts in the two cases give rise to different considerations of what were the natural consequences of the specific acts of provocation which had taken place.

In the later case Channell J. said in the course of his judgment, "I agree with the proposition . . . that the law does not as a rule regard an illegal act as being the natural consequence of a temptation which may be held out to commit it. For instance, a person who exposes his goods outside his shop is often said to tempt people to steal them, but it cannot be said that that is the natural consequence of what he does . . . but I think the cases with respect to apprehended breaches of the peace show that the law does regard the infirmity of human temper to the extent of considering that a breach of the peace, although an illegal act, may be the natural consequence of insulting or abusive language or conduct. Possibly this is an exception to the rule. . . ."

This view is supported by the recent case of *Duncan* v. *Jones* (1936) 1 K.B. 218. The appellant was about to address a number of people in a street when a police officer, who reasonably apprehended that a breach of the peace would occur if the meeting were held, forbade her to continue. The appellant persisted in trying to hold the meeting

and obstructed the police officer in his efforts to prevent her doing so. Neither the appellant nor any of the persons present at the meeting committed, incited or provoked a breach of the peace. It was held that as it is the duty of a police officer to prevent breaches of the peace which he reasonably apprehends, the appellant was guilty of wilfully obstructing the officer when in the execution of his duty. The only issue in this case was whether or not the police officer *reasonably* apprehended that the meeting would give rise to a breach of the peace. If the facts warranted that apprehension then he was empowered, and it became his duty, to take proper steps to prevent it. Prohibiting the continuance of the meeting was, in the judicial view, a proper, perhaps the only effective, step, and accordingly the appellant in refusing to recognise the prohibition committed the offence of obstructing a police officer in the exercise of his duty.

The law in this regard cannot yet be considered satisfactorily settled.

(b) Rout.

As soon as the persons associated in an unlawful assembly do any act towards carrying out the design which has made their assembly unlawful, they become guilty of constituting a rout at Common Law. It is sufficient for our purpose to notice that a rout necessarily involves an unlawful assembly.

(c) Riot at Common Law.

A rout becomes a riot at Common Law when the object of the assembly is actually put into operation by the exercise of force on the part of the persons who compose it with the common intention of resisting any opposition. This form of illegal assembly is to be distinguished from the statutory offence created by the *Riot Act*, 1715.

(d) Riot under the Riot Act.

Where an unlawful assembly of not less than twelve persons fails to disperse within an hour after a Justice of the Peace has read, or has endeavoured to read, the form of proclamation calling upon them to disperse set out in the *Riot Act*, 1715 (popularly but erroneously termed " reading the *Riot Act* "), the assembly becomes a riotous one. The participants in a riotous assembly (as opposed to the Common Law riot which is a misdemeanour) are guilty of a felony punishable with penal servitude for life. Any persons who, after the period of one hour allowed for dispersal, take appropriate steps to secure the suppression of the assembly, are given an indemnity by the *Riot Act* against any liability which might otherwise result from the commission of the acts intended to bring about that suppression. We may here

observe that at Common Law, and independently of any statutory provision, private persons are justified in the exercise of requisite force to suppress the commission of any tumultuous felony. If, however, the force exerted should be greater than that which is called for in the particular circumstances, the persons employing that excess of force will be liable for its consequences. It follows that measures might be taken to suppress a riot before the expiration of an hour after the statutory proclamation has been read or sought to be read. In such case, however, those who seek to restore the peace run the risk of incurring liability where their conduct goes beyond what the exigencies of the occasion demand. Once, however, the assembly has become a riotous one by the elapse of the hour permitted for dispersal, that risk disappears, for the statutory indemnity becomes operative.

(e) Seditious Assembly.

Persons who seek to incite disaffection among the Crown's subjects, to bring the constitution and Government of the realm, as by law established, into contempt, and generally to carry out, or prepare for carrying out a public conspiracy, are guilty of the offence of sedition. An assembly of persons for any such purpose constitutes the offence of seditious assembly.

(f) Unlawful Associations under Statute.

1. *The Unlawful Societies Act*, 1799, prohibits by Section 2, as unlawful associations:—

(i) Every society the members of which are required or admitted to take any oath or engagement within the intent and meaning of the *Unlawful Oaths Act*, 1797, or to take any oath not required or authorised by law;

(ii) Every society the members of which take or in any manner bind themselves by any such oath or engagement on becoming members of such society;

(iii) Every society whose members take, subscribe or assent to any test or declaration not required by law or not authorised by the Act;

(iv) Every society of which the names of the members are kept secret from the society at large or which have any committee or select body so chosen that the members thereof are not known by the society at large to be members of such committee or select body;

(v) Every society which has any president, treasurer, secretary, delegate or other officer so chosen or appointed that the election or appointment of such persons to such offices will not be known to the society at large; and every society of which the names of all the members and of all committees or select bodies of members and

of all presidents, treasurers, secretaries, delegates and other officers, are not entered into a book or books to be kept for that purpose and to be open to all the members of such society;

(vi) Every society which is composed of different divisions or branches, or of different parts acting in any manner separately or distinct from each other, or of which any part shall have any separate or distinct president, secretary, treasurer, delegate or other officer elected or appointed by or for such part, or to act as an officer for such part.

It is made an offence under the Act for any person to become a member of any society falling within the above provisions, or for any person directly or indirectly to maintain correspondence or intercourse with such society or with any division, branch, committee, president, treasurer, secretary, delegate or other officer or member thereof, as such. It is similarly an offence to aid, abet or support such society or any members or officers thereof, as such.

An exemption is created by the Act in the case of any declaration to be taken, subscribed or assented to by members of any society where the form of the declaration is first approved and subscribed to by not less than two Justices of the Peace and is registered with the Clerk of the Peace (Section 3).

A further relaxation of the provisions of Section 2 is made in favour of masonic lodges, which are deemed not to be unlawful societies provided that the name of the lodge and the usual place and time of its meeting together with the names and descriptions of every member are registered with the Clerk of the Peace before the 25th of March in each year (Sections 5 and 6).

2. *The Unlawful Drilling Act*, 1819, prohibits all meetings and assemblies of persons constituted:—

(i) For the purpose of training themselves or of being trained or drilled to the use of arms, or

(ii) For the purpose of practising military exercise, movements or evolutions,

without any lawful authority from the Crown.

3. *The Unlawful Oaths Act*, 1797, makes it a criminal offence for any persons to administer or to participate in the administering or taking of any oath or engagement purporting or intended to bind the persons taking that oath to engage in any mutinous or seditious project or generally to participate in transactions or confederations or conduct contrary to the public weal.

4. *The Public Order Act*, 1936, makes it a punishable offence for

any person to wear in any public place or at any public meeting a uniform signifying his association with any political organisation or with the promotion of any political object save with the permission of a Secretary of State (Section 1). Under Section 2 it is provided that if the members or adherents of any association of persons, whether incorporated or not, are:—

(a) Organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) Organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose;

then any person who takes part in the control or management of the association, or in so organising or training any members or adherents thereof, is guilty of an offence.

The Act makes provision also for the preservation of public order on the occasion of processions. By Section 3 (1), if the chief officer of police, having regard to the time or place at which, and the circumstances in which, any public procession is taking place or intended to take place, and to the route taken or proposed to be taken by the procession, has reasonable grounds for apprehending that the procession may occasion serious public disorder, he may give directions imposing upon the persons organising or taking part in the procession such conditions as appear to him necessary for the preservation of public order, including conditions prescribing the route to be taken by the procession and conditions prohibiting the procession from entering any public place specified in the directions; provided that no conditions restricting the display of flags, banners or emblems shall be imposed except such as are reasonably necessary to prevent a risk of a breach of the peace.

These powers are extended by Section 3 (2). If at any time the chief officer of police is of opinion that, by reason of particular circumstances existing in any borough or urban district or in any part thereof, the powers conferred upon him by the preceding sub-section will not be sufficient to enable him to prevent serious public disorder being occasioned by the holding of public processions in that borough, district or part, he shall apply to the council of the borough or district for an order prohibiting, for such period not exceeding three months as may be specified in the applications, the holding of all public processions, or of any class of public procession, either in the borough or

urban district as the case may be, and upon receipt of the application the council may, with the consent of a Secretary of State, make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State.

Under Section 3 (3) it is enacted that within the City of London and the Metropolitan Police District, the Commissioner of the City of London police or the Commissioner of Police of the Metropolis respectively are empowered, with the consent of a Secretary of State, to make orders prohibiting processions in the police area or in any part thereof, similar to the orders which may be made by a command under Section 3 (2).

Section 4 makes it an offence for any person, while present at any public meeting or on the occasion of any public procession, to have with him any offensive weapon otherwise than in pursuance of a lawful authority. Such an authority is deemed to exist only in the case of a person acting in his capacity as a servant of the Crown or of either House of Parliament or of any local authority or as a constable or as a member of a recognised corps or as a member of a fire brigade.

Section 5 of the Act appears to resolve some of the doubts occasioned by the judgment in *Wise* v. *Dunning* (1902) 1 K.B. 167. It provides that any person who, in any public place or at any public meeting, uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence. Offences created by Section 2 of the Act are punishable on summary conviction (i.e. at petty sessions before a metropolitan or stipendiary magistrate or justices of the peace) by imprisonment for a term not exceeding six months or by a fine not exceeding one hundred pounds or by both such imprisonment and fine; on conviction on indictment (i.e. at quarter sessions or assizes in a trial with a jury) the respective maxima are two years imprisonment or a fine of five hundred pounds or both (Section 7 [1]). Other offences under the Act are punishable by imprisonment for not more than three months or a fine not exceeding fifty pounds or both (Section 7 [2]). It is interesting to note the interpretation for the purposes of the Act of material terms employed therein:—

Meeting means a meeting held for the purpose of the discussion of matters of public interest, or for the purpose of the expression of views on such matters.

Public meeting includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise.

Public place means any highway, public park or garden, any sea beach and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and includes any open space to which, for the time being, the public have or are permitted to have access, whether on payment or otherwise, and

Public procession means a procession in a public place (Section 9 [1]).

5. *The Trafalgar Square Act*, 1844, prohibits meetings in or about Trafalgar Square, London, save subject to the restrictions and conditions imposed by the Act.

6. *The Seditious Meetings Act*, 1817, prohibits the convention of any meeting of more than fifty persons within one mile of Westminster Hall during the sitting of either House of Parliament or the Courts of Justice, for the purpose of petitioning the King or either House of Parliament.

7. The by-laws of local authorities duly promulgated under statutory authority may render certain meetings illegal in the locality in which such by-laws are operative.

CHAPTER II

RIGHT OF PUBLIC MEETING

We are now in a position to comprehend in its full implication the statement that English law does not recognise any positive right of public meeting either for a political or for any other purpose in a public place.

§ 1. **Meetings in Public Places.** The right of public meeting, as commonly understood, consists in nothing more than the conglomerate rights of many individuals to be in a particular place of public resort at the same time. So long as those persons do not offend private rights of property so as to commit a trespass, or conduct themselves in a manner obnoxious to the private or public enjoyment of property so as to commit a nuisance, or bring themselves into conflict with the law relating to unlawful and riotous assembly, and so on, there is no general principle of law which denies to them the right to remain in that place. There is not so much a right to assemble in a public place as an immunity from removal so long as public or private rights are not violated or threatened.

The absence of any substantive right to meet in public makes it impossible, as a rule, to resort to any legal process where interference with a public meeting is alleged, except in so far as individual rights of personal safety and freedom are thereby infringed. If there is no *right* on the part of a number of persons to constitute themselves as a meeting in a public place, they can assert no remedy solely on the ground that the *meeting*, as such, has been the object of interference. A member of a meeting which has been scattered by antagonists would of course be entitled to damages against his assailants for the *assault* which they had committed against him—i.e. for the invasion of his right to the safety and freedom of his person; but he could not claim compensation for loss of the privilege of continuing to attend the meeting. No legal right sustains that privilege and no legal process can be founded merely upon a deprivation of it.

It must not, however, be supposed that a meeting in a public place is not directly or indirectly under the protection of the law so long as the assembly remains within the law and is not called upon to disperse by a person in authority in circumstances which justify such a request.

In the first place, each individual member of the assembly has a personal right of action for assault if he is unjustifiably removed by force from where he is entitled to remain, and secondly, persons who improperly interfere with a lawful public meeting are rendered guilty of criminal offences under the *Public Meeting Act*, 1908, and the *Public Order Act*, 1936 (see § 4).

§ 2. **Meetings on the Highway.** There being no general right to assemble in a public place, there is in particular no right to meet on the public highway. This does not mean that a meeting on the highway is necessarily unlawful, but that such an assembly is liable to dispersal if it gives rise to obstruction. The public highway is dedicated to the public use only for the purpose of passing or going along thereon (*Dovaston* v. *Payne*, 2 Hy. Bl. 527). A person may legitimately complain if he is prevented from passing along a public highway, but he has no grievance if he is not allowed to remain stationary so as to prevent others from passing along. " There is so such thing as a right in the public to hold meetings as such in the street. . . . That does not necessarily mean that anyone is doing an illegal act if he is not at that moment passing along. It is quite clear that citizens may meet in the streets and may stop and speak to each other. The whole thing is a question of degree. . . . Open spaces and public spaces differ very much in character, and before you could say whether a certain thing could be done in a certain place, you would have to know the history of that place. For example, there may be certain places which are dedicated to certain uses . . . and things that were otherwise lawful may be restrained if they interfered with the purpose of that dedication " (*McAra* v. *Edinburgh City Corporation*, 1913, S.T. 1059 at p. 1073).

The principle is further illustrated by the case of *De Morgan* v. *Metropolitan Board of Works* (1880) 5 Q.B.D. 155, in which the appellant had been convicted of infringing a by-law made by the Board under the authority of the *Metropolitan Commons Supplemental Act*, 1877. The by-law provided in respect of a public common that no person should deliver " any kind of public speech or address . . . except with the written permission of the Board." It was contended on behalf of the appellant that the by-law was *ultra vires* and void—i.e., that it went beyond the powers conferred upon the Board by the Act of 1877. The ground of this contention was that the common in question was one which had been dedicated " for the use and recreation of the public as an open and uninclosed place for ever," and that the Board could not prevent the public from assembling at any time for the purpose of hearing sermons, addresses or lectures upon any subject.

The conviction was affirmed upon the ground that a public meeting might monopolise the whole area to the exclusion of those who wished to use it for recreation. Here again the question was essentially one of fact as to when a meeting held on the common impeded its use for the purpose for which it was primarily dedicated.

The position is epitomised in the statement that " the public's right of user of a highway is essentially a *right of passage*—i.e. a right for all subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance." A claim, on the part of persons so minded, to assemble in any number and for so long as they please upon a highway to the detriment of others having the right of free passage is irreconcilable with that right and there is no authority in favour of such a claim (*Ex parte Lewis*, 1888, 21 Q.B.D. 191). It does not, however, follow that a meeting held upon a highway is essentially unlawful. While there is no right to meet there, no wrong is done merely by holding a meeting on a public highway (*Burden* v. *Rigler*, 1911, 1 K.B. 337). These considerations are not relevant to the case of a highway the property in which is vested in private persons and which is not dedicated to the public. In such a case, it is an actionable trespass for persons, without licence, to hold a meeting (*Hampstead Garden Suburb Trust Ltd.* v. *Denbow*, 1913, 77 J.P. 318). The position in such a case corresponds to that which exists where a public meeting is held on private premises (see Chapter 3, § 3). In *Reg.* v. *Pratt* (1885) 4 E. & B. 860, it was held that a person who went upon a highway, the soil of which was privately owned, for the purpose of poaching, is in law a trespasser.

§ 3. **Breach of the Peace.** The preservation of public order requires that conduct which induces a breach of the peace should be subject to immediate determination by officers of the law. A police constable is accordingly empowered at Common Law to arrest anyone who *in his presence* commits a breach of the peace. Until the decision in *Duncan* v. *Jones* (1936) 1 K.B. 218, this Common Law power was assumed to be confined to cases where breaches of the peace had actually been or were in the course of being committed. It appears from the judgment in that case, however, that the power of arrest may extend to cases where a breach of the peace is only apprehended and a police constable is obstructed in pursuing such steps as he deems requisite to prevent the apprehended breach from occurring (*supra*, p. 12).

The Common Law powers of a police constable to arrest without a warrant have been considerably extended by local and general Acts of Parliament such as the *Metropolitan Police Act*, 1840, and the *Public Order Act*, 1936.

§ 4. **Protection of Lawful Meetings.** As has been seen, there is no abstract right to meet in public places, susceptible of direct assertion; but a public meeting is protected indirectly:—

(i) As a consequence of the individual rights of persons to remain unmolested so long as they pursue their lawful avocations. This is subject to the qualification that authorised officers may remove even law-abiding persons innocent of any specific contravention of the law if their presence threatens to induce a breach of the peace. This qualification is exemplified by cases such as *Wise* v. *Dunning* and *Duncan* v. *Jones* (*supra*). It appears also in an extreme form in *Humphries* v. *Connor* (1869), 17 Ir. C. LR. 1., where a Protestant lady wearing an orange lily joined an assembly of Roman Catholics. The lily was the emblem of a party regarded by Roman Catholics with odium and violent antipathy, and, in the circumstances, the wearing of it was likely to provoke a breach of the peace. A police constable asked the lady, who had no intention of creating a disturbance at the meeting, to remove the lily, and on her refusal himself removed it, there being no other apparent means of obviating a breach of the peace. In an action by the lady for assault, it was held that the circumstances justified the conduct of the constable. If this decision be logically pursued it must follow that, where no other method will serve the public interest to preserve the peace, removal of a person may be similarly justified notwithstanding that he or she may be acting inoffensively.

(ii) By the imposition of penalties on those who impede or disturb the conduct of a duly constituted public meeting. Under the *Public Meeting Act*, 1908, it is provided that any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a Member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the *Corrupt and Illegal Practices Prevention Act*, 1883, and in any other case shall on summary conviction be liable to a fine not exceeding five pounds or to imprisonment not exceeding one month (Section 1 [1]).

Any person who incites others to commit an offence under the section is guilty of a like offence (Section 1 [2]).

Section 5 of the *Public Order Act*, 1936, provides further that any person who at any public meeting uses threatening, abusive or insult-

ing words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, is guilty of a punishable offence.

(iii) By the power of arrest without warrant with which the police are invested at Common Law where any person has committed, or is committing, or is reasonably apprehended to be likely to induce, a breach of the peace. The effect of such an arrest is to remove the source of interference from the meeting so that it may be peaceably pursued. These powers are amplified by the provisions of the *Public Meeting Act*, 1908, Section 1 (3) of which (as amended by Section 6 of the *Public Order Act*, 1936) enacts that if any constable reasonably suspects any person of committing an offence under Section 1 (1 and 2) of the Act of 1908 (*supra*), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address, and if that person refuses or fails so to declare his name and address or gives a false name and address he shall be guilty of an offence, and if he refuses or fails so to declare his name and address or if the constable reasonably suspects him of giving a false name and address, the constable may, without warrant, arrest him. *The Public Order Act*, 1936, further enacts that a constable shall be authorised to arrest without warrant any person reasonably suspected by him of committing any offence under Section 1, 4 or 5 of that Act (Section 73 [3]) (see Chapter 1, § 4 [*f*] [4]).

CHAPTER III

PUBLIC MEETINGS ON PRIVATE PROPERTY

THE ownership of land or of a lease of land carries with it the right to sole and exclusive possession of the property concerned. Any unlawful violation of that right constitutes a trespass, and the rightful occupier may assert or seek those legal remedies which are available for the protection of his possession.

§ 1. **Remedies for Trespass.** These are:—

(i) An action for damages against the trespasser.

(ii) An injunction, i.e. an order of the Court enjoining the trespasser against a repetition or continuation of the wrongful act.

(iii) Ejectment of the trespasser.

The first two of these remedies are dilatory inasmuch as they involve judicial proceedings pending which the trespass is suffered to continue. The third remedy is summary in its nature and seeks to remedy the trespass forthwith by the forcible expulsion of the trespasser or by forcible prevention of the wrongful entry which is threatened. The right of using force against a trespasser is vested only in the lawful occupier of land (or his agents), for he alone is entitled to complain of a disturbance of the right of possession.

It must not, however, be supposed that an arbitrary use of force against a trespasser is justifiable. Except where the trespass is accompanied by some degree of violence, force cannot legitimately be employed against the trespasser until he has been requested to leave the property and has been accorded a reasonable opportunity of doing so peaceably. If the trespasser does not avail himself of that opportunity and persists in the trespass, the application of force to procure his removal is permitted. The degree of force employed must, however, be limited to such as is reasonably necessary to bring about the ejectment of the wrongdoer. Excessive violence against a trespasser renders the rightful occupier liable for the tort of assault (*Collins* v. *Renison*, 1754, 1 Sayer 138). Beating or wounding or the infliction of any form of physical injury is in itself illegal save in so far as such conduct may be rendered necessary by the violent resistance of the trespasser.

§ 2. **Licensees.** It will be apparent from what has been said in relation to trespass, that a person is entitled to remain upon premises in the lawful occupation of another, only by the licence and permission of the occupier. A person so authorised to remain upon another's premises is termed a licensee, and his right to remain is coterminous with the licence which is given to him. Accordingly a licensee is bound to withdraw from the premises as soon as the licence to remain has been duly revoked (*Wood* v. *Leadbitter*, 1845, 13 M. & W. 838). Refusal to leave after due revocation constitutes the quondam licensee a trespasser, and the measures already indicated may be adopted to bring about his removal.

As a rule a licence to enter upon premises may be revoked at the will of the occupier, and the subsequent application of force to a person from whom leave to remain upon those premises has been withdrawn will not entitle that person to claim damages for assault where the degree of force was not unreasonable. This rule is, however, qualified where the licensee has a contractual right to remain and that right is coupled with an *interest* to remain for the accomplishment of some specific object. Thus in *Hurst* v. *Picture Theatres Ltd.* (1915) 1 K.B. 1, the plaintiff had paid for a ticket of admission to a cinema. Before he had seen the entire programme he was requested to leave by the management, who mistakenly believed that he had not bought a ticket. On his refusal to go, he was ejected by the direction of the manager. In these circumstances there could be no question but that the plaintiff was entitled to damages for breach of contract, but such damages would amount only to the sum he had paid in order to view a performance which he had not been allowed to see (*Frank Warr & Co. Ltd.* v. *London County Council*, 1904, 1 K.B. 713). Whether he could claim damages for the assault or not depended on whether the demand that he should leave was an effective revocation of his licence to remain in the cinema. In an earlier case (*Wood* v. *Leadbitter* [*supra*]), it had been held in not dissimilar circumstances that notwithstanding payment for a licence it remained revocable, so that the licensee could be made a trespasser at the will of the licensor, and that the aggrieved licensee could do no more than seek redress for breach of contract even where he had been forcibly evicted as a trespasser. This view was abandoned in *Hurst* v. *Picture Theatres Ltd.* (*supra*), where it was held on the facts that the plaintiff's licence to enter the cinema was coupled with an interest to see the whole of the programme which the ticket authorised him to view. During the exhibition of that programme, the licensors were not entitled and were unable to revoke the licence so long as it was not abused and the licensee comported himself properly.

§ 3. **Meetings on Private Premises.** The principles we have considered serve to define the legal position of persons who attend a meeting held on private property. Their right to be present at such a meeting must have its origin in the permission or licence of those entitled to possession of the premises for the time being. That licence may be granted subject to such conditions as the licensors choose to impose, and a breach of any conditions affecting the right to enter upon the premises will reduce the licensee to the status of a trespasser. Even where the licensee observes the conditions upon which the licence was granted, it is subject to arbitrary withdrawal at any time, unless the licence was granted under a contract and the licensee has an interest (in the sense suggested in § 2) to remain at the meeting until its due conclusion.

It follows that, apart from the case where payment is made for admission, a person attending a meeting on private property may be requested at any time, by those in charge of the meeting, to leave. If that person refuses to comply with the request he may be ejected as a trespasser by or under the authority of those from whom he derived his permission to enter on the property. As in the case of any trespasser, the force applied to a member of a meeting who has improperly refused to leave it is stringently restricted to what is necessary in the particular situation. An excess of force will entitle the ejected member of the meeting to redress for what is an assault committed upon him. He may claim damages not only from those immediately responsible for the undue violence of which he complains, but also from those who authorised its application. Where, however, it is sought to recover damages from a person under whose orders the ejectors are alleged to have acted, it is necessary to establish that there was an actual authorisation to do the particular acts of which complaint is made. Thus in *Lucas* v. *Mason* (1875) L.R. 10 Ex. 251, the chairman of a meeting had instructed the stewards to remove any persons taking part in a disturbance at the back of the hall in which the meeting was being held. Acting upon this instruction, the stewards decided on their own initiative who were the persons responsible for the disturbance and forcibly removed them. One of those so dealt with was entirely innocent of complicity in the disturbance, and in the course of his removal he was severely hurt. He claimed damages for assault from the chairman of the meeting. The considerations arising out of this claim should be kept clearly in view. They are:—

(i) There was a right to eject *any* person from whom permission to remain was withdrawn, for whatsoever reason.

(ii) Excessive force in procuring the removal of any person would entitle him to claim damages from the actual evictors.

(iii) The person evicted with undue violence could seek redress also from those who had *authorised his eviction.*

It was held in the case cited that the chairman had intended to authorise the eviction only of the participants in the disturbance. As the plaintiff was not one of them, his eviction was not in pursuance of the instructions of the chairman, who, accordingly, could not be held responsible in law. The stewards, of course, were liable for the assault they had committed.

Where payment for admission has been made the decision in *Hurst* v. *Picture Theatres Ltd.* (*supra*) appears to justify the statement that expulsion from a meeting can be legitimately effected only where (i) the person attending the meeting has conducted himself in such a manner as to constitute a breach of the conditions on which the licence was granted to him or (ii) the terms of the licence reserve to the licensor an arbitrary right of revocation (in which case the licensee has not that "interest" or right to exhaust the benefit of the licence which would render it irrevocable).

It need only be added that where a licence is granted for a money payment or other valuable consideration, it confers a right of admission to the premises concerned only upon the person to whom it was intended and agreed that the licence should be given. In *Said* v. *Butt* (1920) 3 K.B. 497, a theatre manager particularly desired to exclude a certain dramatic critic from his theatre for a first-night and refused to sell him a ticket. The dramatic critic thereupon procured a third party to obtain a ticket, and sought with it to enter the theatre. He was refused admission and brought an action for damages. It was held that the purchase of the ticket conferred no contractual rights in the nature of a licence or otherwise upon the plaintiff. The management had never intended to enter into a contractual relationship with him. The position would be different in a case where it was intended to sell tickets of admission to the world at large and it had not been manifested *before* the sale of a ticket that it was intended not to grant admission to some specified person. In such a case the contract arising out of the sale of the ticket could not be repudiated on the ground that there was a mistake as to the identity of the purchaser and that identity was of fundamental importance in relation to the contract (*King's Norton Metal Co.* v. *Edridge*, 1897, 14 T.L.R. 98).

§ 4. **Powers of the Police.** We have seen that, apart from express statutory regulation, the powers of the police in relation to meetings held in public places depend upon the Common Law conception of the King's peace and the power and duty to put an end to or to

prevent a breach of it. Statutory provisions, as *e.g.* the various Metropolitan Police Acts, empower the police to take steps to prevent obstruction of a highway and, if need be, to arrest any person who obstructs the police themselves in the exercise of this or other of their duties.

The report of a departmental committee on the duties of the police declared in 1909 that "in the case of a meeting held on private premises, whether for public purposes or not, the police have no power to enter except by leave of the occupier of the premises or promoters of the meeting, or when they have reason to believe that a breach of the *peace is being committed.*" It now appears that the view thus expressed is narrower than the law requires and that the police are empowered to enter private premises not only where a felony or breach of the peace has been or is being committed, but also where they have "reasonable grounds for believing that an offence is imminent or *is likely to be committed*" (*Thomas* v. *Sawkins*, 1935, 2 K.B. 249).

The co-operation of the police in preserving order may also be procured by the organisers of meetings on private property. The conditions under which police will be deputed to assist in the control of a meeting vary in different localities, but the cost of such special service must generally be met by the promoters of the meeting. A memorandum circulated from the Home Office some years ago stated that "there is evidence in recent years of an organised attempt by the more irresponsible elements of certain sections of the population seriously to interfere with the right of free speech at the meetings of their political opponents. Having regard to the risk of such organised interference leading to disorder and breaches of the peace, the Home Secretary has advised chief constables that they should, in his opinion, be ready to entertain applications from responsible persons of all recognised political parties convening a meeting, for police to be present, inside the meeting as well as outside, without charge to the promoters, if the chief constables are satisfied that there is reason to apprehend any interference with the meeting of a nature calculated to lead to disorder or breach of the peace."

Where the police are so employed their powers of arrest are still limited to the cases discussed in Chapter II, § 3. Accordingly any person who acts in a disorderly manner must be dealt with by the chairman, who should request his withdrawal. If this proves ineffectual, the chairman may direct the stewards to eject the obstreperous party. Violent resistance by him amounting to a breach of the peace will justify the intervention of the police.

CHAPTER IV

FREEDOM OF DISCUSSION

We have so far considered those general principles of law which determine where, and in what circumstances, meetings may be held, and under what conditions they may be dispersed. Assuming a meeting to be legitimately constituted, what may there be spoken?

§ 1. **The Right of Free Speech.** The answer is to be found expressed in general language in *Reg* v. *Cuthell* (1799) 27 St. Tr., where Lord Kenyon declared (at p. 675) that "The truth of the matter is very simple when stripped of all ornaments of speech, and a man of plain commonsense may easily understand it. It is neither more nor less than this: that a man may publish anything which twelve of his countrymen think is not blamable, but that he ought to be punished if he publishes that which is blamable. That in plain common sense is the substance of all that has been said on the matter."

The analogy between the right of public meeting and what is generally described as the "right of free speech" is at once apparent. In neither case is there a positive and explicitly defined right; in both cases the so-called right is measured by the specific limitations upon freedom which the law imposes. "The Law of England" said Lord Ellenborough "is a law of liberty" (*Rex* v. *Cobbett*, 1804, 29 St. Tr. 49). The rights of the subject are to be arrived at by assuming a universal freedom and then ascertaining what limitations on that freedom public policy and expediency have, in the course of experience, from time to time dictated. We may, therefore, adapt the dictum of Lord Kenyon and say that the right of free speech is the right to say or publish whatsoever one pleases so long as what is said or published does not contravene the law or violate the private rights of another. This condition of the law entails the absence of any censorship, and it follows that there does not exist, as a rule, any power to prevent that from being said which ought not to be said; there is simply a power to punish, where that which is uttered constitutes a criminal offence such as blasphemy, or a right to exact compensation where words spoken amount to an actionable slander. In exceptional cases the Courts may by injunction prohibit the publication of a threatened libel; and

where seditious or other utterances likely to cause a breach of the peace are apprehended, the police may intervene to prevent the breach from arising by removing its potential cause (*Thomas* v. *Sawkins*; *Humphries* v. *Connor*, *supra*).

§ 2. Limits of Free Speech.

(a) Seditious Utterances.

Any utterance which is calculated or is likely to cause disaffection among the subjects of the Crown or to bring into contempt the Constitution and Government of the realm as by law established is a criminal offence by the person giving vent to such utterance, for which he may be prosecuted and punished (*Rex* v. *Fussell*, 6 St. Tr. [N.S.] 1177).

(b) Blasphemy.

Blasphemy against God or the Christian religion is indictable at Common Law. In order to constitute the offence there must be such an element of vilification, ridicule or irreverence as would be likely to exasperate the feelings of others and lead to a breach of the peace, or to deprave public morality generally, or to shake the fabric of society, or to be a cause of civil strife. A temperate and respectful denial even of the existence of God is not an offence against the law. The crime consists in the manner in which the doctrines are advocated (Archbold's Crim. Prac.; *Bowman* v. *Secular Society Ltd.*, 1917 A.C. 406).

(c) Obscenity.

Under the *Profane Oaths Act*, 1745, it is an offence "if any person shall profanely curse or swear." The penalties provided for by the statute reflect the character of the period. On conviction before a justice there may be imposed, in the case of a first offence, a fine of one shilling for a day labourer, or common soldier, sailor or seaman; of two shillings for any other person under the degree of a gentleman, and of five shillings for every person of or above the degree of a gentleman. A conviction may include several oaths on the same day, and the penalty is to be calculated according to the number of oaths (*Rex* v. *Scott*, 27 J.P. 420).

(d) Modern Statutory Prohibitions.

(1) The *Public Order Act*, 1936, makes it an offence to use threatening, abusive or insulting words or behaviour in any public place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned (Section 5, *and see* Chapter 1 § 4 [f] [4]).

(2) The *Official Secrets Acts*, 1911–1920, prohibit the unauthorised communication or publication by any person of information relating to certain matters which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract.

(e) Defamation.

It is a tort (i.e. a civil wrong) to publish a false and defamatory statement concerning another person without lawful justification, and the person defamed may by action recover damages from each and every person responsible for the publication and propagation of the defamatory matter. A statement is defamatory if it tends to bring the person to whom it refers into hatred, ridicule or contempt, that is, if it conduces to the injuring of his reputation (*Capital and Counties Bank* v. *Henty*, 1882, 7 A.C. 741).

Defamation may consist in either a libel or a slander. It will be a libel where the defamatory statement is conveyed by some medium permanent or enduring in character, such as a written document, a caricature, an effigy or a gramophone record, or a talking film (*Youssoupoff* v. *Metro-Goldwyn-Mayer Pictures Ltd.*, 1934, 50 T.L.R. 581).

A slander, on the other hand, takes the form of a statement by spoken words or some other ephemeral means such as gestures, hissing or other inarticulate but significant sounds (*Monson* v. *Tussauds Ltd.*, 1894, 1 Q.B. 671).

Both forms of defamation are, in general, subject to the same principles and governed by the same rules. Two points of difference must, however, be noticed. First, the publication of a libel is not merely a tort but is also a criminal offence, while the utterance of a slander is criminal only when its effect must be to provoke an *immediate* breach of the peace. Secondly, a person complaining of the publication of a libel may recover damages for the general injury to his reputation without proving that he has suffered any specific damage as a direct consequence of the publication. This principle is tersely expressed in the statement that libel is actionable *per se*. In an action for slander, on the other hand, the plaintiff must, as a rule, establish that he has suffered some specific item of damage or loss as a result of the slander, that is to say, he must prove special damage. Only in exceptional cases is a slander actionable *per se*, namely where it imputes :—

(i) That the plaintiff has committed a criminal offence punishable by imprisonment; or,

(ii) That the plaintiff suffers from a foul disease rendering him (or her) unfit for society; or,

(iii) Unchastity in a woman (*Slander of Women Act*, 1891); or,

(iv) Unfitness or incompetence in the plaintiff in the way of his trade or business; or,

(v) Such unfitness to occupy an office of honour as would justify the removal of the plaintiff from that office.

Mere vulgar abuse or insult or vituperation or acrimonious comment is not of itself an actionable slander (*Parkins* v. *Scott*, 1882, 1 H. & C. 153). The statements made must be such as tend to injure the reputation of the person to whom reference is made.

It is not, however, essential that the words used should be patently and intrinsically defamatory. A statement innocent in itself may, from a knowledge of extraneous facts, exhibit a disparaging and depreciatory meaning. Thus there is no apparent defamation in stating that " X is a bachelor," but to persons who are aware that Y has passed as X's wife, the statement is disparaging of Y and is defamatory if in fact she is lawfully married to X (*Cassidy* v. *Daily Mirror Newspapers*, 1929, 2 K.B. 331). Such a latent imputation which emerges only when a statement is interpreted in relation to particular known facts is termed an " innuendo," and wherever words complained of do not on the face of them bear a defamatory meaning, it is requisite that the complainant set up the innuendo upon which he relies as rendering defamatory the language used. In *Morrison* v. *Ritchie* (1902) 4 F. 645 Ct. of Sess., a newspaper mistakenly announced the birth of a child to a lady who had been only two months married. The defamatory innuendo is here plain and the defendants were held liable in an action for libel. This decision raises yet another important issue in relation to the law of defamation, namely that liability does not depend on the intention of the defamer, but on the fact of defamation (*Cassidy* v. *Daily Mirror Newspapers*, *supra*; *Hulton & Co.* v. *Jones*, 1910, A.C. 20).

It should be observed that in order to give rise to an actionable wrong there must be publication of the defamatory matter. This consists simply in bringing it to the notice of any person or persons other than the plaintiff himself (*Pullman* v. *Hill*, 1891, 1 Q.B. 524), or the spouse of the defendant (*Wennhak* v. *Morgan*, 1888, 20 Q.B.D. 635). There need be no general publication in the ordinary sense, and, moreover, an innocent but negligent publication of a defamatory statement will, as a rule, be as much a source of liability as an

intentional and conscious publication (*Sadgrove* v. *Hole*, 1901, 2 K.B. 1).

Not only is the person from whom a libel or a slander originally emanates responsible for the injury to the reputation of the person defamed, but so also is anyone who publishes the defamation further. Where the republication is a natural consequence of the original publication, or where it results from the performance of some duty or is authorised by the person whence the defamatory statement first proceeded, that person will be liable for the damage resulting from the republication as well as for the injury attributable to the original utterance or statement. Hence it is that if a speaker knows that his statements are to be reported in the public press and expressly or impliedly authorises their publication, he may be sued for libel as well as for slander (*Parkes* v. *Prescott*, 1869, L.R. 4 Ex. 169).

Each publication of the same libel creates an independent cause of action. Thus where the same defamatory statement is reproduced in several newspapers, a separate action lies against each of the newspapers involved. It is, however, provided by Section 5 of the *Law of Libel Amendment Act*, 1888, that application may be made for the consolidation of the several actions so that they may all be tried together. The total damages may then be assessed as one sum and the liability apportioned between the different defendants as the jury thinks proper. Section 6 of the Act enacts that in an action for libel against a newspaper, the fact that the plaintiff has already recovered or sued for compensation in respect of another publication of the same libel, may be set up in mitigation of damages.

§ 3. **Defences to an Action for Defamation.** It is not inevitable that the publication of a defamatory statement should involve a liability in law. Certain answers may effectively be raised as defences in an action for libel or slander. These defences are justification, privilege and fair comment.

(a) **Justification.**

A person cannot legitimately complain of statements which denude him of a character or reputation to which he is not in fact entitled. It is accordingly a good defence in an action for libel or slander for the defendant to prove that the statements made by him were true, i.e., were justified in fact (*McPherson* v. *Daniels*, 1829, 10 B. & C. 263). This defence will succeed even though not every word of the statement on which the action is founded is proved to be literally true; it will be sufficient to show that the statement is substantially accurate. To say of a person that he had been convicted twenty-five

years previously of larceny will not create a liability to pay damages merely because the conviction was but twenty-four years old. On the other hand, the statement would not be substantially justified so as to extinguish liability by proving that the person referred to was convicted twenty-five years ago of bigamy (*Wakely* v. *Cooke*, 1849, 4 Ex. 511). The defence of justification possesses a double edge, for if it be unsuccessfully set up, the persistence of the defendant in the truth of the statements made by him may be regarded as aggravating the injury to the plaintiff and will tend, as a result, to increase the damages awarded as compensation.

It has been seen already that a libel (but not usually a slander) may be the subject of a criminal charge. To such an accusation (as opposed to a civil claim for damages), justification is not, of itself, a sufficient defence. It is, however, a good answer to a charge of libel to prove that the statements made were justified, i.e., were substantially true, *and* that their publication was in the interest of the public (*Libel Act*, 1843, Section 6).

(b) Privilege.

Even though a defamatory statement cannot be justified, a claim for damages may be successfully resisted on the ground that the statement was made on a " privileged occasion." Such an occasion may be defined as a combination of circumstances wherein either (a) defamatory statements may be made without involving the person publishing them in any liability whatsoever, or (b) that person is saved from liability, unless it be proved that the statements were impelled by some malicious or improper motive so that the privilege attributed to the occasion was abused.

Cases falling within the first category are said to be " absolutely privileged," while those coming within the second class are protected by a " qualified privilege." It may be said generally that the law confers a privilege as to defamatory statements where the public interest is served by an unmitigated freedom of utterance or communication, and where the legitimate protection of private interests evokes statements between persons concerned with those interests. Statements made upon privileged occasions are termed " privileged statements " or " privileged communications." It should, however, be understood that privilege attaches not to the statements themselves but to the situation in which they are made (*Adam* v. *Ward*, 1917, A.C. 309).

(1) Absolute Privilege.

No action will lie at all in respect of defamatory statements, irrespective of their truth or falsity and notwithstanding that they are tainted with malice, when they are made:—

(i) By a judge, advocate, juryman, witness or party in the course of and in connection with any judicial proceeding in any court, civil or military (*Royal Aquarium Co.* v. *Parkinson*, 1892, 1 Q.B. 451; *Co-partnership Farms Ltd.* v. *Harvey Smith*, 1918, 2 K.B. 405).

(ii) By a member of Parliament in either House but not outside (*Gerhold* v. *Baker*, 1918, 35 T.L.R. 102).

(iii) In Parliamentary papers published with the authority or by the order of either House of Parliament, or in any complete reproduction of such papers by any person (*Parliamentary Papers Act*, 1840).

(iv) Between officers of State in the course of their official duty (*Chatterton* v. *Secretary of State for India*, 1895, 2 Q.B. 189).

(v) In the course of professional communications of a confidential character between solicitor and client.

(vi) In a contemporaneous newspaper report of judicial proceedings, provided the report be a fair and substantially accurate account of those proceedings.

This last protection appears to result from the provisions of Section 3 of the *Law of Libel Amendment Act*, 1888, which enacts that a fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged. A "newspaper" is defined in this connection as "any paper containing public news, intelligence or occurrences, or any remarks or observations therein printed for sale and published in England or Ireland periodically or in parts or numbers at intervals not exceeding twenty-six days" (*Newspaper Libel and Registration Act*, 1881, Section 1).

(2) Qualified Privilege.

A qualified privilege is said to attach to situations wherein defamatory statements which cannot be justified as true are none the less not actionable unless they were made maliciously, i.e. with some improper or oblique motive going beyond the privilege which the law accords to the particular situation or occasion. It is as well to recall that where no privilege exists it is immaterial whether or not the person making a defamatory statement was animated by express malice. His liability exists independently of his motive in making the statements. On an occasion of absolute privilege, the element of malice is similarly immaterial, for no liability at all can arise in such a case. Where, however, there exists a qualified or conditional privilege, protection is accorded to statements made only so long as they are within the proper limits of that privilege, the bounds of which are deemed to be exceeded when malice is established (*Clark* v. *Molyneux*, 1877, 3 Q.B.D. 244).

Whether an occasion is entitled to a qualified privilege is a question of law, and as such must be decided by the judge on the facts before him. Broadly speaking, it may be said that such privilege exists in relation to defamatory statements where there is a duty, legal, social or moral, to make them, or where they are made for the protection of some interest common to the parties between whom the statements pass, or where they are contained in a report of proceedings in Parliament or in Courts of Law or at meetings of public concern. A common example of communication in pursuance of a moral duty is an answer by a previous employer to inquiries addressed to him as to the character and capacity of his former employee. The privilege disappears, however, if the employer indulges a private prejudice in his response to such inquiries, or, in any case, if the enquirer has no interest in the information which is sought. There is a moral duty to inform, for example, a prospective employer, of the antecedents of the projected employee; there is no duty to publish such information to the world, and such a publication would, in consequence, not be privileged (*Jackson* v. *Hoppeton*, 1864, 16 C.B. [N.S.] 829).

Statements made at meetings convened for the discharge of a public duty, as, for example, a meeting of a borough council, are conditionally privileged; and the mere presence of strangers who have no concern in the duties to be performed will not of itself destroy the privilege (*Pittard* v. *Oliver*, 1891, 1 Q.B. 474; *Booth* v. *Arnold*, 1895, 1 Q.B. 571). It may be, however, that the presence of parties not directly concerned with the business of a meeting will be significant of an improper motive in publishing the defamatory matter so as to upset the defence of privilege which would otherwise exist; and the occasion may cease to be privileged altogether if the presence of the strangers to the business of the meeting is attributable to the express invitation of the person or persons making the defamatory statements (*Parsons* v. *Surgey*, 1864, 4 F. & F. 247). In the case last cited the meeting was of shareholders in a company, so that a further ground (i.e. apart from the presence of Press reporters) for denying any privilege to the occasion was that matters with which the meeting was concerned affected only those who were members of the company and did not touch the general interest of the public, as in the case of a meeting of a local authority.

It need hardly be pointed out that where a particular occasion is privileged, the privilege endures only so long as *all* the facts which produce it continue to exist. Thus in *Martin* v. *Strong* (1836) 5 A. & E. 535, the conduct of the plaintiff was impugned at a meeting convened in connection with the administration of a public charity. The offensive statements were actually made after the chair at the

meeting had been vacated. It was held that those statements were not part of the proceedings of the meeting and were therefore outside the privilege of the occasion constituted by those proceedings.

The statutory protection enjoyed by newspaper reports of public meetings is dealt with in § 4 below; it represents an extension of the Common Law rules as to privilege and is justified by the necessity of enabling newspapers to fulfil their function of conveying information of public interest free from a vexatious and too stringent exposure to liability for the reproduction of defamatory matter. Apart from the statutory provisions giving a special immunity to newspapers, they stand in the same position as regards the publication of defamatory matter as any private person (*Marks* v. *Conservative Newspaper Co. Ltd.* 1886, 3 T.L.R. 244).

(c) **Fair Comment.**

While the reputation of an individual must be protected from unjustified calumny and attack, the public interest requires that there should be an ample latitude for the proper expression of opinion as to the conduct of public affairs and as to any matters of public concern. It is accordingly a good defence at Common Law in an action for defamation, that what was published consisted of fair comment on matters of public interest, provided always that the publication of the comment did not overstep what the public interest required. "It is always to be left to a jury to say whether the publication has gone beyond the limits of a fair comment on the subject-matter discussed" (*Campbell* v. *Spottiswoode*, 1863, 3 B. & S. 769). It is a question of law for the judge to decide whether the subject matter of the comment is of public concern (*South Hetton Coal Co.* v. *North-Eastern News Association*, 1894, 1 Q.B. 133). Comment includes criticism as well as merely depreciatory expressions of opinion.

There are three essential aspects of the defence of fair comment which require consideration. They are:—

(i) The matter complained of must be commented, i.e. an expression of opinion and not a statement of fact.
(ii) The comment must be upon a matter of public interest.
(iii) The comment must be fair.

As to (i) it will be recalled that where a statement of fact is defamatory in its nature, it may be defended upon the ground that the facts stated were true (i.e. justification may be pleaded), or that the occasion on which the statement was made was privileged. The defence of fair comment is not relevant to assertions of fact. In *Hunt* v. *Star Newspaper Co., Ltd.*, (1908) 2 K.B. 309, a published article contained state-

ments of fact intermingled with expressions of opinion. The article did not indicate what part of it purported to describe the facts and what in it merely represented the views of the writer. It was held that the defence of fair comment could not be successfully pleaded. "If the facts are stated separately, and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negatived by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that injurious sattements are based on adequate grounds known to the writer, though not necessarily set out by him" (Fletcher Moulton L.J., in case cited, at pp. 319, 320).

As regards (ii) it is not possible to define the scope of matters affecting or concerning the public interest. Events which invite public notice will fall within it, as for example, the publication of a book (*Thomas* v. *Bradbury Agnew & Co. Ltd.*, 1906, 2 K.B. 62), and the presentation of a play (*Merivale* v. *Carson*, 1887, 20 Q.B.D. 275). Public attention also is necessarily attracted by the conduct of persons occupying public offices or exercising public functions, such as a magistrate (*Hibbins* v. *Lee*, 1804, 4 F. & F. 243), or a member of Parliament, or a public speaker (*Odger* v. *Mortimer*, 1873, 28 L.T. 472), or local government official (*Purcell* v. *Sowler*, 1877, 36 L.T.R. 416).

A general, though not an exhaustive test, of the limits of public concern is whether the particular activity in question solicits public attention or induces repercussions affecting the community.

As regards (iii) it is clear that any comment or opinion or criticism which is founded on false facts cannot be regarded as *fairly* directed against the person upon whom reflection is made. There must be a true basis of fact for the comment, although the opinion expressed thereon may be misconceived or erroneous (*Digby* v. *Financial News, Ltd.*, 1907, 1 K.B. 502). If the facts are untrue the comment cannot be fair. Moreover, the opinion or criticism which is published must be fair in the sense that it must be an honest expression of opinion. Comment may be honest and fair even though it takes the form of a personal attack; but not if it merely exploits an opportunity for indulging a personal dislike. Comment prompted by spite or ill-will is not protected, and the defence of fair comment cannot succeed if it be proved that the opinions presented were impelled by malice (*Thomas* v. *Bradbury & Co. Ltd.*, *supra*).

§ 4. **Newspaper Reports.** We have already seen that Section 3 of the *Law of Libel Amendment Act*, 1888, appears to confer an absolute privilege upon newspaper reports of judicial proceedings. The

section enacts that " a fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter."

(*The Judicial Procceedings* [*Regulation of Reports*] *Act*, 1926, prohibits the publication, in relation to judicial proceedings, of any indecent matter, or details the publication of which would be calculated to injure public morals, and it restricts also to certain specified particulars the publication of matters arising in the course of judicial proceedings for the dissolution of marriage.)

Section 4 of the Act of 1888 protects by privilege " a fair and accurate report published in any newspaper of the proceedings of a public meeting," unless it be proved that such report or publication was published or made maliciously. The publication of blasphemous or indecent matter (which is in any case unlawful at Common Law—*Steele* v. *Branman*, 1872 L.R. 7 C.P. 216) is excluded from this privilege. The Section further provides that the protection intended to be afforded by it shall not be available as a defence in any proceedings if it be proved that the defendant was requested to insert in the newspaper in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other publication, and refused or neglected to insert such letter or statement.

For the purposes of the Section a public meeting includes " any meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted." A meeting of shareholders in a public company has been held to be within this definition (*Ponsford* v. *Financial Times Ltd.*, 1900, 16 T.L.R. 248), but a chapel service is not (*Chaloner* v. *Lansdown*, 1894, 10 T.L.R. 290).

It is declared in the Section that nothing provided by it shall be deemed to protect the publication of any matter not of public concern and the publication of which is not for the public benefit (*Ponsford* v. *Financial Times Ltd.*, *supra*).

Apart from reports of public meetings Section 4 applies also (except where neither the public nor any newspaper reporter is admitted) to fair and accurate reports of any meeting of any:—

(i) Vestry.
(ii) Town Council.
(iii) Board or local authority formed or constituted under the provisions of any Act of Parliament (*e.g.* a parish council).

(iv) Committee appointed by any of the above-mentioned bodies.

(v) Commissioners authorised to act by letters patent, Act of Parliament, warrant under the royal sign manual, or other lawful warrant or authority.

(vi) Select committees of either House of Parliament.

(The function of vestry meetings, except as regards the affairs of church or charities, have been transmitted to urban or borough councils by the *Local Government Act*, 1933).

To summarise these provisions, a newspaper report of any meeting comprised within the above classes is privileged if:—

(i) It is fair and accurate;

(ii) The public or newspaper reporter was admitted to the meeting;

(iii) The statements complained of are not blasphemous or indecent; and

(iv) The statements complained of are of public concern and their publication was for the public benefit.

The privilege is lost if:—

(i) It be proved that the defamatory matter was published maliciously; or

(ii) That the defendant has refused or neglected after reasonable request to insert in the newspaper a reasonable letter or statement by way of contradiction or explanation of the report.

A similar privilege extends to the publication in a newspaper of any notice or report issued for the information of the public and requested to be published by:—

(i) Any government office or department;

(ii) An officer of state;

(iii) A commissioner of police;

(iv) A chief constable (Section 4, *ibid.*).

Here again, the existence of the privilege is subject to the conditions set out above wherein the protection of the Act is lost.

A further statutory defence is afforded to newspaper statements by the provisions of Section 2 of the *Libel Act*, 1843, as amended by the *Civil Procedure Acts Repeal Act*, 1879. The effect of those provisions is that in an action for libel contained in any public newspaper or other periodical publication, it is open to the defendant to plead that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before

the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the libel, or if the newspaper or periodical publication in which the libel appeared is published at intervals exceeding one week, had offered to publish an apology in any newspaper or periodical publication to be selected by the plaintiff in the action.

The onus is on the defendant to prove that the publication was not due to any gross negligence on his part (*Peters* v. *Edwards*, 1887, 3 T.L.R. 423). Whether the tendered apology is adequate is a question of fact for the jury (*Risk Allah Bey* v. *Johnstone*, 1868, 18 L.T. 620).

The defence of apology cannot be raised unless, at the same time, a payment of money into court is made by way of amends (*Libel Act*, 1845, Section 2).

§ 5. **Admission of the Press.** At public meetings members of the Press are entitled to be admitted to the same extent as any other member of the public. With regard to other meetings, Press representatives have in general no better right to be admitted than that enjoyed by the public at large. This will normally be a mere right to attend by the permission of those in authority over the meeting. Thus it has been held that members of the public, or of the Press, have no right to attend meetings of a borough council (*Tenby Corporation* v. *Mason*, 1908, 1 Ch. 457). The *Local Authorities* (*Admission of the Press to Meetings*) *Act*, 1908, has, however, changed the position in law since the decision in the *Tenby Corporation Case*. By that Act it is laid down that representatives of the Press *shall be admitted to the meetings of every local authority*. There is, however, a proviso to the effect that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest (Section 1).

For the purposes of the Act, the expression "local authority" means:—

(a) A council of a county, county borough, borough (including metropolitan borough), urban district, rural district or parish, and a joint committee or board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the *Local Government Act*, 1894;

(b) An education committee and a joint education committee, established under Section 17 of the *Educational Act*, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;

(c) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(d) Any other local body which has, or may hereafter have, the power to make a rate (Section 2).

The expression " representatives of the Press " is defined as meaning duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

The right conferred upon the Press by the Act of 1908 to be admitted to meetings of a local authority does not extend to any meeting of a committee of a local authority (Section 3) unless the committee is itself a local authority (*ibid.*); but any committee of a local authority may permit the Press to be present at its meetings (Section 4).

The right of any local authority to admit the public to its meetings if it so chooses is expressly declared to be unaffected by the provisions of the Act (Section 5).

PART II

CONVENTION, CONSTITUTION AND CONDUCT OF MEETINGS

CHAPTER V

REGULATION OF PROCEEDINGS

THE preceding chapters have dealt with the general rules of law which govern assemblages from their external aspect, i.e. by reference to the relation of the rights of the component members of a meeting to the interest of the public at large. Consideration of the connection between the individual rights, on the one hand, of persons constituting a meeting, and, on the other hand, the rights of the general community, has exhibited the ultimate limits within which legitimate assembly is possible, and the farthest extent to which discussion at such an assembly, or the reproduction of statements made thereat is permissible. It is plain, however, that if a meeting is to accomplish the specific purposes for which it was convened, it is inexpedient to indulge to the full the liberty of discussion which the law is content to allow. Proceedings would become interminable and the object of the meeting frustrated.

§ 1. **The Internal Regulation of Meetings.** It follows that constraints upon discussion are necessary beyond those which the law imposes, and we are led accordingly to a consideration of the internal aspect of the regulation of a meeting, or, as it is generally described, the "conduct" of a meeting. This will be governed (see Chapter I, § 2) either by conventional rules or by specific regulations depending upon the character of the meeting itself. It has already been observed that, in the case of a private meeting, there will usually exist more specific regulations for the conduct of its business because the relationship between members is more intimate and their rights *inter se*, e.g., to attend, to be heard and to vote, may be clearly defined by contract or statute or otherwise.

There are two fundamental principles as to the conduct of meetings applicable to all classes of assembly. In the first place there must be a plurality of persons (*Sharp* v. *Dawes*, 1876, 2 Q.B.D. 29); otherwise there is no "meeting." The expression meeting is, however, exceptionally used in an artificial sense which is satisfied by the presence of a single individual. Thus (i) where all the shares of a particular class in a company are vested in a single holder, that person will constitute a meeting of shareholders of that class (*East* v. *Bennett Bros. Ltd.*, 1911, 1 Ch. 163); (ii) in bankruptcy proceedings, if only one creditor has

proved his debt, he alone will form a meeting of creditors (*In re Thomas; Ex parte Warner*, 1911, 55 S.J. 482); (iii) a meeting of the board of directors of a company may consist of one director (*In re Taurine Co. Ltd.*, 1884, 25 Ch.D. 118); and (iv) a committee meeting may consist of a single individual (*In re Fireproof Doors Ltd., Umney* v. *The Company*, 1916, 2 Ch. 142). Secondly, there must be present in every meeting a form of authority for directing and circumscribing the deliberations of those present.

These requirements are axiomatic and universal. There must be at least two persons and there must be someone in control.

These essential and primary elements are subject to elaboration varying with the nature of the meeting and the circumstances of its convention. For example, a special regulation affecting a particular meeting may demand the presence of a minimum number of persons higher than the two sufficient at Common Law. Again, in the case of private meetings where persons are invested with a direct and positive right to participate in certain deliberations, they are, as a necessary corollary, entitled to proper and adequate intimation of the convention of such meetings.

The result of these principles and their various ramifications are examined in this and succeeding chapters.

§ 2. **The Office of Chairman.** The person duly endowed with authority to control and superintend the conduct of a meeting is generally styled the chairman. He derives his authority from his appointment, and the mode of his appointment will depend upon the type of meeting over which he is called upon to preside. The meetings of various bodies, e.g. parish councils and registered companies, are separately treated elsewhere in this book; for the present we are concerned only with considerations of a general character affecting the office of chairman.

§ 3. **Election of Chairman.** It may be that when a meeting is assembled some person present is entitled to claim *virtute officii* the right to preside over that meeting. For example, the *Port of London (Consolidation) Act*, 1920, provides that at every meeting of the Port Authority the chairman, if present, shall preside. If the chairman is absent, the vice-chairman, if present, shall preside. If both the chairman and the vice-chairman are absent, such other member as the members then present choose shall preside (Second Schedule, Part I [1]). If there is no such person present, it will be necessary to appoint a chairman. The appointment may be regulated by standing orders or statutory rules as in the case of a district council (*Local Government*

Act, 1933, Section 33) or articles of association as in the case of a registered company, in which event the appropriate regulations must be strictly complied with. In the absence of any specific rules, the meeting must proceed to elect a chairman; either those responsible for the convention of the meeting or some member of it will nominate a proposed chairman. There is no general rule which requires such a proposal to be supported by a seconder, but it is customary that it be formally seconded. The proposal is then put to the meeting, and upon its being carried the nominee becomes the chairman of the meeting, deriving his authority from the consensus of those present. Where more than one person is nominated various methods may be adopted to determine where the preponderance of the favour of the meeting lies. A direct vote is convenient where there are only two nominations; an eliminating vote is used where there is a larger number, a succession of votes being taken, on each of which the nominee receiving the least votes is excluded from the next vote.

The normal method is to ballot for the appointment of chairman. A ballot takes the form either of a secret vote or of drawing lots. Both types have the advantage of avoiding the embarrassment of making the electors openly avow their preferences. Where regulations require a ballot to be taken, this will be interpreted as a drawing of lots unless the context or custom otherwise requires (*Eyre* v. *Milton Proprietary Co. Ltd.*, 1936, Ch. 244).

Whatever be the means employed for filling the chair, any irregularity therein must be forthwith challenged. Otherwise it will be cured by the tacit acquiescence of the meeting (*Cornwall* v. *Woods*, 1846, 4 Notes of Cases, 555) and the appointed chairman will be deemed duly elected. A candidate for the office of chairman cannot preside over the election, or act as "returning officer" or scrutineer of the votes vast on the election; if he does so, his election will be vitiated (*Fanagan* v. *Kernan*, 1881, 8 L.R. Ir. 44). If an outgoing chairman seeks re-election he may, however, vacate the chair before the election takes place, and appoint a deputy to preside pending the result of the election (*Reg.* v. *White*, 1867, L.R. 2 Q.B. 557).

In the case of statutory bodies and Common Law corporations, the time at which a presiding officer in relation to proceedings of the body concerned must be elected may be specifically provided for. The failure to effect an election at the appointed time will produce consequences varying with the character of the particular body. Where, for example, the mayor of a borough is not elected at the due time, the High Court, may, by mandamus, direct that the election be held at a time fixed by the Court (*Local Government Act*, 1933, Section 72 [6]). On the other hand, failure to appoint a chairman to preside at a meeting

of creditors in the voluntary winding-up of a company renders those responsible for the omission liable to penalties (*Companies Act*, 1929, Section 238 [3, 4, 6]).

§ 4. **Function and Powers of the Chairman.** "It is the duty of the chairman, and his function, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting." (*National Dwellings Society* v. *Sykes*, 1894, 3 Ch. 159 at p. 162, per Chitty J.). From this dictum and other judicial decisions the principal powers and duties of a chairman emerge as the following:—

(i) Determining that the meeting is properly constituted and that a quorum is present.

(ii) Informing himself as to the business and objects of the meeting.

(iii) Preserving order in the conduct of those present.

(iv) Confining discussion within the scope of the meeting and reasonable limits of time.

(v) Deciding whether proposed motions and amendments are in order.

(vi) Formulating for discussion and decision questions which have been moved for the consideration of the meeting.

(vii) Deciding points of order and other incidental matters which require decision at the time (*In re Indian Zoedone Co.*, 1884, 26 Ch.D. 70).

(viii) Ascertaining the sense of the meeting by

(a) putting relevant questions to the meeting and taking a vote thereon (and, where authorised, giving a casting vote).

(b) declaring the result;

(c) causing a poll to be taken if duly demanded.

(ix) In the case of a meeting which is recurrent or is one of a series, to deal with the record or minutes of the proceedings.

(x) To adjourn the meeting where prevailing circumstances justify that course.

(xi) Declare the meeting closed when its business has been completed.

For the due discharge of his function the chairman is invested with appropriate powers, which are dealt with under the headings which follow.

§ 5. **Preservation of Order.** In the case of a meeting which is not concerned with local or private material interests, the chairman may, if necessary, direct the removal of any obstreperous person whose conduct threatens to disturb the proceedings. The offending member should, however, first be requested to withdraw, and only on his refusal to do so peacefully should force be employed (Chapter III, § 2). The degree of force applied to a recalcitrant member must be limited to that amount which the occasion reasonably requires (*Collins* v. *Renison*, 1754, 1 Sayer 138). If excessive violence is used, the chairman who has authorised the removal of the member is liable in damages for the tort of assault (*Hawkins* v. *Muff*, 1911, Glen's Local Government Case Law 151); but only if there was an authorisation of the removal of the actual party complaining of the violence used against him (*Lucas* v. *Mason*, 1875, L.R. 10 Ex. 251). Such an authorisation will exist even in the absence of an antecedent request for the ejection of the member, so long as there is a subsequent ratification by the chairman whereby he makes himself a party to the ejection.

If the conduct of a refractory member of a meeting is such as to amount to a breach of the peace, he may properly be charged with causing that breach and given into the custody of a police officer. But this course is not justified merely because a person present has done acts of an annoying and disturbing character. Thus in *Wooding* v. *Oxley*, 1839, 9 C. & P. 1, where a person had persistently interjected "hear, hear," at a temperance meeting and put vexatious questions to the speaker and made audible and derogatory observations upon the speaker's statements, it was held that this did not, of itself, constitute a breach of the peace justifying the arrest of the offender. The breach must be continuing at the time the offender is given into charge of a police-officer, or there must exist facts which create a reasonable apprehension that a breach of the peace which has ceased will be renewed (*Baynes* v. *Brewster*, 1841, 2 Q.B. 375). An arrest improperly and unjustifiably effected renders those responsible liable in an action for false imprisonment at the suit of the aggrieved party (*Wooding* v. *Oxley*, *supra*).

Where the meeting is one which those present have a specific right to attend, such as a general meeting of a company or the meeting of a statutory body, the question of removal is more delicate. Any duly constituted assembly has an implied power to act for the protection of the collective interests of those present; and a meeting might properly resolve that a certain member be suspended or excluded if his conduct results in substantial obstruction of the business of the meeting. Such a resolution could be made effective, if need be, by the exercise of force against the object of it. "The power . . . of

suspending a member guilty of obstruction or disorderly conduct during the continuance of (a meeting) is . . . reasonably necessary for the proper exercise of the functions of any . . . assembly " (*Barton* v. *Taylor*, 1886, 11 App. Cas. 197, per Lord Selborne at p. 204).

It would appear that in cases of blatant and aggravated obstruction, the chairman could properly direct the expulsion of a member from the meeting without the authority of a suspensive resolution. The expulsion must, however, be in pursuance of the authority which is vested in the chairman in his capacity as chairman. In extreme cases, as where a general uproar has arisen, the chairman may be justified in adjourning the meeting of his own volition (see Chap. VII, § 8 [b]).

It need only be added that in the case of meetings such as have been last considered, there is also power to give into custody any person committing a breach of the peace or who is reasonably apprehended to contemplate an imminent breach.

§ 6. **Regulation of Discussion.** Notwithstanding the freedom of speech which the Law allows, not everything which might legally be said at a meeting can expediently be voiced. Discussion must be curtailed to enable the meeting to achieve its purpose. Here again we must distinguish between the two main classes of meetings, namely those which persons attend as mere licensees, and meetings where members have a right to be present by virtue of some material right to take part in the proceedings. In the first class, persons who speak at all do so by the permission of those in control of the organisation of the meeting. When a chairman has been elected, permission to address the assembly must emanate from him; and by him, although arbitrary action is not looked for in a chairman, such permission may be arbitrarily withheld. If the meeting seeks to pursue some serious purpose, the chairman will, of course, endeavour to apportion time for discussion so that as many people may be heard as the circumstances permit. He is, however, under no legal duty to give an adequate or any opportunity to specific individuals to express their views. In meetings of this kind the range of discussion will therefore be governed by the discretion of the chairman. In the exercise of that discretion the chairman will be influenced by four factors, namely:—

(i) The scope of the business of the meeting as defined by the invitation to attend it, e.g. the terms of the ticket of admission or public announcement or advertisement, or by a formal agenda (see Chapter VI, § 4);

(ii) The desire to educe the true sense of the meeting, i.e. its collective attitude towards the subject under discussion.

(iii) His inherent duty to conduct the proceedings with impartiality. This duty is an essential corollary of (ii).

(iv) The time available for the purposes of the meeting.

A private meeting, i.e. one held in pursuance of a legal duty or to satisfy private legal rights held in common by a number of persons, stands on a different footing. The performance of the functions for which the meeting is convened and the protection and furtherance of the interests with which it is concerned, require that, so far as may be, all persons related by the common duty or rights should be given a proper opportunity of participating actively in the deliberations of the meeting and of influencing its decisions. This requirement imposes upon the chairman a duty that is not merely moral or ethical. The members of such meetings have a positive and substantial right to demand that the proceedings should be conducted with due regard to their respective interests.

One rule which is common to all meetings and which is demanded by courtesy and good sense is that only one person should speak at a time and that he should address his remarks to the chair. Lastly, though it need hardly be said, loyalty to the rulings of the chairman is an essential element in the proper conduct of a meeting.

The various specific methods of eliciting the sense of a meeting and of admitting and limiting discussion on matters before the meeting are considered in Chapter VII.

§ 7. **Irregularities in Procedure.** Irregularities in the conduct of a private meeting may be challenged and, if need be, rectified by legal action. Such action will not be directed towards exacting damages from the chairman in favour of an individual complainant, for the chairman's duties are owed to the meeting as a body and not to individuals. The object of legal action will be to correct the position resulting from the irregularity, and redress will generally take the negative form of an injunction prohibiting the consequences of the irregular proceeding from being put into operation. Since a procedural irregularity violates the rights of the *meeting*, the courts will not intervene to redress a position of which the meeting as a whole (i.e. as represented by the views of the majority) does not disapprove (*Mozley* v. *Alston*, 1847, 1 Ph. 790; *Foss* v. *Harbottle*, 1843, 2 Hare, 461). If the majority at the meeting would be competent to do regularly that which has been irregularly achieved and they approve it, it would be futile for the minority to seek to impair the results of the proceedings; for the same results will ultimately be achieved by the will of the majority with due regard to the formal requirements of

the meeting (*MacDougall* v. *Gardiner*, 1875, 1 Ch.D. 13). Accordingly the courts will give no remedy upon the application of an individual member or even of a number of members if they comprise only a minority of those present at the meeting (*Foss* v. *Harbottle*, *supra*), unless the irregularity is such an abuse of the rights of the minority as to amount to a fraud upon them (*Menier* v. *Hoopers Telegraph Works*, 1874, 9 Ch. App. 350; *MacDougall* v. *Gardiner*, *supra*).

The principle that a complaint of irregularity must emanate from a representative majority does not apply, however, to a case where some specific individual right is infringed and action could not be taken save by the party aggrieved. Thus in *Pender* v. *Lushington*, 1877, 6 Ch.D. 70, the chairman of a meeting of shareholders in a company improperly rejected the votes of a member, and declared an amendment carried. If the votes in question had been accepted as valid and taken into account, the amendment would have been lost. It was held that the shareholder whose votes were rejected was entitled to an injunction restraining the directors from acting upon the footing that the votes were bad. It is clear in this case that the " majority " could not rectify the position, for the essence of the question which came before the court was where the majority lay, i.e. whether with the amendment or against it. In a similar case (*Henderson* v. *Bank of Australasia*, 1890, 45 Ch.D. 330) a shareholder proposed an amendment which was rejected by the chairman. The motion, having been put in its original form, was declared carried. The aggrieved shareholder claimed a declaration that the resolution as passed was bad. It was held that the plaintiff was entitled to such a declaration, since " the resolutions were carried at a meeting improperly conducted, for that *the shareholders* had a right, and should have been allowed, to move amendments " (Fry L.J. at p. 348). " The chairman, under a mistaken idea as to what the law was which ought to have regulated his conduct, prevented a material question from being brought before *the meeting* " (Cotton L.J. at p. 346). The *dicta* quoted indicate the judicial view that there had been a derogation from the rights of the meeting as a whole as well as a denial of the personal rights of the individual members concerned.

A chairman does not incur personal liability merely by reason of an erroneous decision in relation to the proceedings of a meeting so long as he acts *bona fide* and exercises his discretion honestly (*Breay* v. *Browne*, 1896, 41 Sol. J. 159).

§ 8. **Removal of Chairman.** A chairman elected by a meeting for the duration and purposes of that meeting may be superseded by the will of the meeting. Such a step could be taken where the elected

chairman exhibits gross partiality or incompetence, or is deliberately obstructive.

In the case of meetings of statutory or corporate bodies there may or may not exist a power of " amotion " or removal according to the nature and constitution of the particular body. No general principle exists to determine the question, but the case of *Booth* v. *Arnold*, 1895, 1 Q.B. 571, is authority for the proposition that a power of amotion for reasonable cause, such as corrupt or dishonest conduct, is incident to a corporation at Common Law. " It is a power essential to the good order and management of a corporation, and without it I do not see how the business of a corporation would be carried on " (Lopes L.J. at p. 579).

Apart from Common Law corporations, e.g. in the case of a registered company, the power of removal, if it exists at all, must be derived from the constitution of the particular body concerned as defined in statutory rules, standing orders, articles of association and so on.

CHAPTER VI

CONSTITUTION AND CONDUCT OF MEETINGS

A MEETING which is held to discharge a specific function and at which particular persons are under a duty, or have the right, to attend, must be duly constituted in a manner which enables that function to be discharged.

§ 1. **Convention of Meeting.** It is clear that all persons obliged or entitled to be present must be accorded a proper opportunity for arranging to fulfil their obligation or exercise their right as the case may be. This requires that a sufficient intimation be given of the time and place of the meeting and of the nature of the business to be transacted thereat. These requirements are satisfied by giving due NOTICE of the meeting. Next, the meeting when assembled must conform to the general or particular requirements of the law or of the constitution of the body concerned, as to the minimum number of persons who must act together in transacting the business of the meeting; that is to say, a QUORUM must be present.

§ 2. **Notice.** Notice of a meeting may take any form which sufficiently conveys to the person entitled to receive it, information enabling that person to attend the meeting and to participate in its deliberations; but the form of notice must be reasonable (*Rex.* v. *Hill*, 1825, K.B. & C. 426). Where, however, there are special regulations governing the nature of the requisite notice, those regulations must be stringently observed both as to the form and time in which the notice must be given. Failure to comply with any prescribed rules as to notice will invalidate the meeting and business transacted thereat unless it is not reasonably practicable to summon a particular person (*Nixon* v. *Burt*, 1817, 7 Taunt, 682), e.g., by reason of his address being unknown or his being out of reach (*Rex* v. *Harris*, 1831, B. & Ad., 936). Absence of notice will not vitiate the proceedings where there has been an *effective* waiver by the parties entitled to receive notice of their rights in that regard (see e.g. Section 117 [2] of the *Companies Act*, 1929). The waiver must, however, be clear and explicit (*In re Portuguese Consolidated Copper Mines Ltd.*, 1889, 42

Ch.D. 160). Moreover, it must be within the competence of the person who purports to waive his claim to notice to forgo his right thereto (*Rex* v. *Langhorn*, 1836, 4 Ad. & El. 538). Where the meeting is convened for the discharge of legal duties, whether arising from Common Law or statute, notice cannot be effectively waived (*Young* v. *Ladies' Imperial Club*, 1920, 2 K.B. 523). In *Smyth* v. *Darley* (2 H.L.C. 789), a case which arose out of an election meeting, Lord Campbell stated (at p. 803) that " the election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and, if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance —as, for instance, abroad—*there could not be a good electoral assembly*."

The same principle will apply to any meeting the function of which is the discharge of some legal duty. The failure to give due notice to a person entitled to it is not so much a denial of his right as the source of a material defect in the meeting itself. " The notice is served not for the personal benefit of the recipient, but as an admonition to him to perform a public duty, and a person undertaking a public office cannot exempt himself from those admonitions " (Coleridge J. in *Rex* v. *Langhorn, supra*). In the case last cited, a corporation was empowered to elect a mayor, and the burgesses invested with the right to vote upon such an election were entitled to notice of the meeting convened for the purposes of the election. The officer whose duty it was to serve notice of the meeting was informed by one of the burgesses that notice need not be given to him. It was held that the omission to give that burgess notice invalidated the election.

Meetings governed by specific regulations and having particular functions which are not of a public character are affected also by the rule which demands that the meetings be duly convened. In *Young* v. *Ladies' Imperial Club* (*supra*), the rules of the club required that meetings of the committee should be convened by notification to all the members of the committee. A meeting was held to which a lady appointed to the committee was not summoned as she had previously announced her inability to attend. " Every member of the committee ought," said Lord Justice Scrutton, " to be summoned to every meeting of the committee except in a case where summoning can have no possible result. . . . That a member . . . should not be summoned because she has stipulated that she shall not be troubled, appears to me to be a quite insufficient reason."

These observations have application also to meetings of registered companies. In the case last cited it was stated by Lord Sterndale that

In re Portuguese Consolidated Copper Mines, Ltd. (*supra*), decided also that a person who ought to be summoned cannot dispense the convener of the meeting from summoning him. This case arose out of resolutions passed at a meeting of a board of directors of which notice had not been sent to certain members of the board who did not wish to attend. It was held that the proceedings of the meeting were null and void.

If, however, *all* persons entitled to attend a meeting of a particular body are in fact present together and consent to a meeting being held, the proceedings will be valid notwithstanding that notice has not been properly given (*Musgrave* v. *Nevinson*, 1724, 2 Lord Raym. 1358); and it would appear also that if any individual person entitled to attend a meeting is not given due notice but nevertheless attends the meeting and waives the informality, the meeting will be properly constituted (*Re British Sugar Refining Co.*, 1857, 3 K. & J. 408). In *Smith* v. *Paringa Mines, Ltd.* (1906, 2 Ch. 193), one of two directors of a company sent to the other a notice convening a board meeting for a certain day and time at the company's offices. The recipient of the notice did not attend the meeting but intimated to the other director by telephone that he would see him at a different time on the same day in a corridor of the offices. The two having met, one proposed the appointment of a third person as director. The other objected to the nomination, whereupon the first replied that he would exercise his casting vote. He then declared the nominee duly elected and the board meeting closed. It was held that the election was effective. Although the meeting was not held in accordance with the notice (so that, in effect, notices of the meeting as held were not sent at all), the proceedings were valid. Every person entitled to be summoned thereto was actually present and consented to the meeting being held. This case is to be contrasted with *Barron* v. *Potter* (1914, 1 Ch. 895), where there were only two directors of a company, one of whom refused to attend board meetings at which a quorum was two. The other director, who was also chairman of the company, sent a notice convening a meeting of the board to the first director. The notice was never received by him but he visited the company's offices for another purpose on the day mentioned in the notice. The chairman there encountered him, and having proposed certain motions purposed to vote and declare them carried. It was held that the resolutions so passed were bad. Warrington J. said in his judgment " of course, if directors are willing to hold a meeting they may do so under any circumstances, but one of them cannot be made to attend the board or to convert a casual meeting into a board meeting. In my opinion therefore the true conclusion is that there was no board meeting. . . . If he (the director

unwilling to attend) had received the notice sent to him . . . summoning him to a board meeting different considerations might have arisen."

The mode of giving notice and the period of notice to be given will be determined by the constitution of the body convening a meeting and will be governed by standing orders, articles of association or statutory provisions. If no specific mode of giving notice is prescribed, any reasonable communication of the holding of the meeting will suffice. The ringing of a bell in accordance with an " immemorial custom " has been held not to be a reasonable form of summons to a meeting for the election of burgesses in an ancient borough (*Rex* v. *Hill, supra*). A notice must be clear, explicit, and unconditional. Where a notice stated that a meeting would be held but only in a certain contingency, the notice was held to be bad (*Alexander* v. *Simpson*, 1890, 43 Ch.D. 139).

In relation to meetings of certain bodies, convened for the purpose of effecting certain matters, there exists statutory regulation as to the form and duration of notice. Thus where a meeting of shareholders in a company is convened for the purpose of passing a special resolution, the *Companies Act* requires that not less than twenty-one days' notice shall be given specifying the intention to propose the resolution as a special resolution (Section 117 [2]). Where the full period of notice is not given, the notice is bad. The term of notice required is often measured by a specific number of " clear days." In such a case the specified number of days must elapse *between* the day on which the notice is received *and* the day on which the meeting is to be held, i.e. the period of notice is to be reckoned exclusive of the day of service of the notice and of the day of the meeting. Even where the expression " clear days " is not used, due notice may require that the number of days should be thus exclusively computed (*Re Pavilion, Newcastle-upon-Tyne Ltd.*, 1911, W.N. 235). This is so, for example, in connection with the passing of a special resolution by a company (*In re Hector Whaling Co.*, 1936, 1 Ch. 208).

The constitution of the assembling body may also provide for the contingency of a notice duly sent failing to reach the person to whom it is sent, or for the inadvertent omission to notify a particular person at all. *Prima facie*, where a notice is not effectively served, i.e. is not received by the intended recipient, the position corresponds to that in which no notice is given, and the meeting will in consequence be invalidated. Clause 43 of Table A is typical of the provision made to obviate the risk of proceedings at a meeting being rendered abortive by inadvertent deficiencies of notification. It states that " the accidental omission to give notice of a meeting to, or the non-receipt of notice of a

meeting by, any member shall not invalidate the proceedings at any meeting."

The notice must be given by the person or persons authorised to convene the meeting (*Re State of Wyoming Syndicate*, 1901, 2 Ch. 431), but if a notice in proper form is sent out without due authority, the sending of the notice may subsequently be ratified by the convening authority and the ensuing meeting will be validly held (*Hooper* v. *Kerr, Stuart & Co.*, 1900, 83 L.T. 729). If a body is invested with authority, when properly constituted, to summon a meeting and purports to send out notices in pursuance of that authority, any objection that the body was not properly constituted when the decision to summon the meeting was made must be taken at once. In *Browne* v. *La Trinidad*, 1887, 37 Ch.D. 1, the directors at a board meeting of which one director was not given adequate notice, resolved to summon a general meeting of the company (in pursuance of powers conferred upon the board by the articles of association) for the purpose of removing that director from office. He made no complaint of the inadequate notice until four days before the date for which the general meeting had been convened. That meeting was held and a resolution passed to remove the director. The court refused to declare the meeting invalid on the ground that the board meeting was irregularly constituted.

Where the authority to convene reposes will depend upon the constitution of the assembling body. In the case of a company, the secretary is normally invested with power to send out notices under the authority of the board of directors. It will be seen later (Chapter X) that subject to special conditions, shareholders may requisition the convention of a meeting by the directors, and upon default by them, the members may proceed themselves to convene a meeting (*Companies Act*, 1929, Section 114). In some cases also the court may direct the convention of a meeting and require notices to be issued, as, e.g., a meeting of creditors or contributories in the winding-up of a company by order of the court (*ibid.*, Section 288).

The power of the court by writ of mandamus to command the performance of a statutory or other public duty may also be mentioned, as it enables the courts to direct the convention of a meeting of a statutory body, if that body is bound by law to convene the meeting and neglects or refuses to do so. A mandamus will issue only where it is established that the corporation is required to be assembled for doing certain acts in relation to the public (*Rex* v. *Liverpool Borough*, 1728, 1 Barn. K.B. 82).

These matters are considered in detail in their appropriate context.

In the case of a corporate body which under its charter or by custom is required to hold a meeting on a specific day (called the " charter-

day "), all persons entitled to attend the meeting are deemed to have notice of the fact that it will be held and of the day on which it will be held (*Rex* v. *Hill*, *supra*). It is therefore not imperative that notice be given of matters to be transacted on the charter day (*Rex* v. *Harris*, 1831, 1 B. & Ad. 936).

As a general rule, however, a meeting is not competent to deal with or consider any matters which are outside the scope of the notice convening the meeting, unless all the persons entitled to attend are present and consent (*Rex* v. *Wake*, 1 Barn. K.B. 80; *Machell* v. *Nevinson*, 1809, *cit.* 11 East, 84); but where a meeting of which proper notice has been given is adjourned when certain business is not completed, that business may be carried to completion at the adjourned meeting although the notice therefor does not state its purpose (*Scadding* v. *Lorant*, 1851, 2 H.L.C. 418). Nothing, however, can be transacted at an adjourned meeting without notice except the unfinished business of the original meeting (*Reg.* v. *Grimshaw*, 1847, 10 Q.B. 747). If there is an irregularity in the convention of a meeting any adjournment thereof will also be irregular (*Re Portuguese Consolidated Copper Mines, Ltd.*, 1889, 42 Ch.D. 160). The transaction of business which is outside the scope of the notice convening the meeting will not render the whole meeting irregular (*Re British Sugar Refining Co.*, 1857, 3 K. & J. 408).

§ 3. **Quorum.** It has been seen that, subject to few exceptions, the existence of a meeting involves the contemporary presence of *at least* two persons (*Re Sanitary Carbon Co.*, 1877, W.N. 223, and *supra*, p. 41). It does not follow that two will necessarily suffice. Where matters are to be transacted by a meeting of a defined body whose constituent members are entitled to participate in its deliberations, it would be impolitic, in general, to permit the decisions of only two persons to affect the interests of the entire body. It is usual, therefore, for the regulations of the convening body to require the presence of more than two persons for the constitution of a valid meeting, and the number requisite in any case is termed the quorum. At Common Law, apart from any specific provision, the acts of a corporation must be done by a majority of the corporators, corporately assembled (*Merchants of the Staple of England* v. *Bank of England*, 1887, 21 Q.B.D. 160). Thus in the absence of special custom or particular regulation, a majority of the members of a body must be present at a duly convened assembly in order that an effective meeting should exist. This rule will apply also to meetings of any select body to which certain functions have been delegated (*Rex* v. *Varlo*, 1775, 1 Comp. 248).

The Common Law rule may be displaced by specific regulation which fixes a quorum otherwise. Such regulation may be contained in, e.g., the articles of association of a company, or may result from statutory enactment, as in the case of a meeting of creditors in bankruptcy proceedings.

Persons who are not competent to participate in the matters to be transacted by a meeting cannot be counted in determining whether a quorum is present *in relation to the transaction of these matters*. Thus where, by the articles of association, a director of a company was not permitted to vote upon a contract by the company in which he had an interest, that director could not form part of a quorum of a board meeting while that contract was under consideration (*Re Greymouth Point Elizabeth Rly. & Coal Co. Ltd.*, 1904, 1 Ch. 32). The fact that persons not qualified to participate in the business of a meeting are present thereat does not, of itself, vitiate the meeting or the proceedings, so long as a competent quorum is also present and the business of the meeting is accomplished by that quorum without interference (*In re Imperial Chemical Industries*, 1936, 1 Ch. 587 at pp. 614, 615).

Where a particular body is empowered to fix the quorum for its meetings, it is possible that a regulation requiring that members not authorised to vote but entitled to attend a meeting shall be counted in a quorum will be regarded as valid (*Young* v. *South African and Australian Exploration and Development Syndicate*, 1896, 2 Ch. 268). "It may be . . . that members who are not entitled to vote may (under the company's constitution) be members who are entitled to form a quorum (although) that seems a practical absurdity" (*ibid.* at p. 277, per Kekewich J.).

It is not unusual for persons entitled to take part in the meetings of a particular body to be empowered by its constitution to delegate the exercise of their rights in relation to attending and voting to a proxy. In such a case a proxy who attends may, unless there is a contrary provision, be reckoned in a quorum; but as the existence of a quorum requires the concurrence of the specified number of physical presences, no person can be counted more than once in computing the quorum. For example, if a shareholder in a company attends a general meeting in his own right and also as the donee of a proxy by another member, the shareholder is reckoned only as one for the purpose of the quorum required. Of course, provided that the articles of the company permit voting by proxy, the shareholder would be entitled on a poll to exercise both his own voting power and that of the absent member whom he represents.

There is no right at Common Law to attend a meeting or to vote by proxy (*Harben* v. *Phillips*, 1883, 23 Ch.D. 14 at p. 35). Where

the power is specifically given, the conditions of its exercise must be stringently observed.

Any business transacted at a meeting while a quorum is not present is invalid (*Re Romford Canal Co.*, 1883, 24 Ch.D. 85). This will be so even though a quorum was present at the commencement of the meeting (*Henderson* v. *Louttit*, 1894, 21 Rettil 674). The parliamentary procedure is, in this regard, exceptional, for matters transacted in the House of Commons are validly effected notwithstanding the absence of a quorum, until that fact is brought to the notice of the Speaker or Chairman as the case may be, and there is a " count out."

Where a quorum is fixed by statutory regulation for the due exercise by a corporate body of certain functions, the absence of a quorum will render a meeting completely abortive (*Newhaven Local Board* v. *Newhaven School Board*, 1885, 30 Ch.D. 350). Acts purported to be done in such circumstances will be nugatory not merely as regards the corporation itself, but also in relation to third parties who will not be entitled to allege as against the corporate body that the acts have been duly performed (*D'Arcy* v. *Tamar, Kit Hill and Callington Rly. Co.*, 1867, L.R. 2 Exch. 158). If, on the other hand, the quorum is fixed by the domestic regulations of the constitution of the corporation (e.g., the articles of association of a company), acts done without a quorum being present will be valid in favour of third parties who seek to attribute to the corporation the due accomplishment of those acts, provided the third parties have no notice of the irregularity. The corporation cannot itself, however, assert that the acts have been duly performed (*County of Gloucester Bank* v. *Rudry Merthyr Steam & House Coal Colliery Co.*, 1895, 1 Ch. 629).

§ 4. **Agenda.** In order that persons entitled to attend a meeting may have a reasonable opportunity for consideration of the contemplated subjects of discussion and for arranging their affairs so as to make their attendance practicable, due notice of the business of the meeting and the time and place at which it will be held must be given (*supra*, § 2). When the meeting is actually assembled, the expeditious dispatch of the business before it necessitates that some definite order of proceeding be followed. This order is defined by the agenda or agenda paper which may be devised *ad hoc* for the particular meeting or may follow a form prescribed by standing orders or other regulation. The contents of the agenda are limited by the scope of the notice convening the meeting. Matters of which appropriate notification has not been given cannot be dealt with at a meeting unless they are of an informal character (*Smith* v. *Deighton and Billington*, 1852, 8 Moore P.C. 187; *Young* v. *Ladies' Imperial Club*, *supra*). The agenda will be prepared

under the direction of those authorised to convene the meeting and will set out in chronological sequence the various items of business to be transacted and the matters for discussion. These may include:—

(i) Appointment of chairman;
(ii) Reading of correspondence relating to the meeting;
(iii) Reading and verification of the minutes of the preceding meeting;
(iv) Adjourned business;
(v) Laying reports and accounts before the meeting for adoption or approval;
(vi Special business as indicated in the notice of the meeting;
(vii) Consideration and discussion of motions, the terms of which should appear;
(viii) General business.

While the agenda paper has no direct legal significance, it is of much practical importance in enabling a meeting to discharge its objects with expedition and confidence. The agenda also serves a secondary function as providing a basis for recording in the minutes of the meeting the matters transacted thereat.

CHAPTER VII

DISCUSSION AND DEBATE

IN order that the will or sense of a meeting of numerous persons should be accurately ascertained, it is essential that the matters for its consideration should be clearly formulated.

§ 1. **Motions and Resolutions.** Where the meeting is to determine whether certain acts are to be done and, if so, the method whereby they should be accomplished, the question for its consideration is expressed as a " motion," that is to say a formula whereby the meeting is " moved " to adopt a certain course or do some act or declare a particular attitude.

In the nature of things, a motion must as a rule be positive in its terms, for it would be stultifying if the meeting were exhorted to resolve to do nothing where that result could be achieved by mere inaction. A negative motion could be appropriate only where the assembling body is already committed to a course of conduct which it is desired to avoid, or where certain results must automatically ensue unless the contrary be resolved upon.

The motion having been stated, the meeting will deliberate upon it, and after possible amendment and discussion, the ultimate question as to whether the motion in the form it has come to assume is approved, is put to the meeting. The issue to be decided having, at that stage, been reduced to terms which incorporate agreed amendments (see § 3, *infra*), the question calls for a simple affirmative or negative in answer. The answer which a member of the meeting desires to give is exhibited by the exercise of his vote in accordance with his voting rights (see Chapter VIII). If the motion be approved, it becomes a resolution, the meeting having *resolved* to act as it has been *moved* to do. The expressions " motion " and " resolution " are often, though not with absolute accuracy, used as if they were synonymous (see e.g., *Companies Act*, 1929, Section 117). A recurring passage in the pages of Hansard illustrates a simple motion passed without amendment, namely—" My Lords, I beg to move that the House do now adjourn. Moved accordingly, and, on Question, Motion agreed to."

For the passing of a motion or resolution it is normally sufficient if a simple majority of those *voting* at a meeting are in favour of its adoption. This is the Common Law rule (*Hascard* v. *Somany*, 1693, 1 Freem. K.B. 504), but its application is qualified in many cases by domestic regulation or statutory provision. Thus the rules of a club may require a majority of all those *present* at a general meeting to secure the election of a president; and a composition proposed by a debtor in bankruptcy proceedings must, before the court can give its approval, be accepted at a meeting of creditors by a majority in number and three-quarters in value of *all* the creditors who have proved their debts (*Bankruptcy Act*, 1914, Section 16 [2]).

A substantive motion (i.e. one not dealing merely with matters of procedure or form) in the terms in which it is first propounded to a meeting is called an " original " motion. It must be couched in clear and unambiguous language, so that the meeting is in no doubt as to its purport and intent. A motion which is vague and equivocal in its terms may be rejected by the chairman or presiding officer, who may refuse to put it to the vote (*Henderson* v. *Bank of Australasia*, *supra*, at p. 347). If a motion as proposed presents alternative propositions for the decision of a meeting the chairman may distinguish the different propositions and put them to the meeting separately. Except in the simplest cases, it is practically impossible for an assembly of persons to pronounce simultaneously upon several propositions presented as alternatives. Scottish procedure permits consideration of more than one amendment at the same time.

Where modifications of an original proposal are desired to be considered they should be presented as amendments for consideration by a meeting (see § 3, *infra*). No motion should be put and no resolution can be effectively passed unless it is within the scope of the notice convening the meeting, and within the competence of the meeting itself (*The King* [*Dublin Citizens' Association, and Andrew Beattie, President*] v. *Corporation of Dublin*, 1911, 2 Ir.R. K.B. 245).

Fundamentally, the chairman is entitled, of his own volition, to propound a motion for the consideration of a meeting without proposal or seconding by any other person (*In re Horbury Bridge Coal, Iron & Waggon Co.*, 1879, 11 Ch.D. at p. 118). The right so to do is implicit in the chairman's function to ascertain the sense of the meeting. The general practice is, however, to put motions to a meeting only when they have been duly proposed by one member and seconded by another. Regulations of deliberative bodies may require this, and sometimes demand also that notice of a proposed motion setting out the terms thereof in writing be submitted to the chairman at the opening of the meeting or to the secretary or other official of the convening body prior

to the day of the meeting. When a motion has been duly put to a meeting it cannot be arbitrarily withdrawn. The meeting is entitled to pronounce its attitude towards the motion unless it choose to consent to its abandonment. A motion for withdrawal cannot be put while an amendment is under discussion. The chairman should put to the meeting all relevant motions proposed in accordance with the regulations governing the meeting, and he should endeavour to allow any person who is entitled to speak, and desires to do so, to participate in the discussion on such motions. He may, however, seek to stop debate on any particular motion after reasonable discussion, and may take a vote of the meeting on the question of cessation (*Wall* v. *London & Northern Assets Corporation*, 1898, 2 Ch. 469; and see *infra*, § 2). It is within the chairman's discretion to decide in what order persons should be permitted to speak, but the meeting has the paramount right at any time to resolve that a particular person be then heard. No person is entitled to speak more than once to the same motion except the mover, who has a right of reply to the discussion. This rule is designed to keep debate within limits, but the chairman may, in his discretion, relax it where necessary to permit explanation of the comment of a speaker who had concluded his contribution to the discussion.

A substantive motion which merely reopens a question already disposed of by a meeting should not be accepted at the same meeting (*see* § 10 as to rescission of resolutions).

Motions may be classified as:—

(i) *Original* motions, propounding the substantial issue for consideration and action;

(ii) *Amending* motions to modify the main proposition;

(iii) *formal* motions (which include *dilatory* motions) affecting matters of procedure or form.

§ 2. **Interruption of Debate.** A meeting is not bound to pursue consideration of a motion in the form in which it is originally proposed, or to come to any decision upon it at all. Various methods exist whereby a meeting is enabled to deal with a motion before it conformably with the desires of those present. These methods consist in employing the formal motions whereby an original motion may be amended or discussion thereon may be terminated. The formal motions constitute legitimate means, as opposed to casual interjection, of interrupting discussion on an original motion. They comprise:—

(1) Motion to amend.

(2) The Previous Question, or motion " that the question be not now put."

(3) The Closure, or motion " that the question be now put."
(4) Motion to proceed to the next business.
(5) Motion to adjourn the debate.
(6) Motion to adjourn the meeting.
(7) Miscellaneous suspensive motions.

These motions are considered in the pages which follow.

The dilatory motions (i.e. the formal motions other than the motion to amend) cannot be moved by a person who has moved, or seconded, or spoken on the original motion which is being debated when it is sought to interpose the previous question or the closure and so on. The same restriction applies to a person who has moved or seconded an amendment to the main question; and no person may intervene in discussion on a particular motion by moving more than one formal motion.

It may here be added that a member of a meeting may also raise at any time a point of order; that is to say, he may ask the ruling of the chairman as to whether the proceedings are being duly conducted in regard to some particular matter or incident. A point of order may be raised without notice, and should be raised (and taken) immediately the alleged irregularity or impropriety becomes apparent, e.g., where a quorum is not present or offensive language is used. The ruling of the chairman upon a point of order is given forthwith, but a terse discussion of the point raised may be allowed. The chairman's decision is conclusive and final.

§ 3. **Amendments.** It has been seen that a motion put to a meeting must be precisely formulated and unequivocal in its terms in order to be susceptible of a clear expression of opinion by the meeting. If a motion presents alternative propositions, it becomes impossible on a single vote to determine which of the propositions is assented to, and by whom, and which rejected; nor is it likely that, in the confusion engendered by the simultaneous presentation of two different ideas for consideration, the meeting would have a plain conception of the matters upon which it was invited to pronounce its views.

The effect of the principle that a motion must contain a single proposition which requires a direct affirmation or negative is that in a vote upon the motion itself there is no means of expressing a view which lies between complete approval or entire rejection. It may be that the substantial proposition would commend itself to the majority provided it was modified or varied in some respect without necessarily discarding the essential proposal. The method of adapting a motion which has been moved to the precise objective of the meeting is by moving appropriate amendment. A motion to amend may be moved

at any time after discussion on the original motion has been invited by the chairman and before that motion has been put to the vote. Apart from custom or specific regulation as to the seconding of an amendment, it is not imperative that a motion to amend be supported by a seconder. Even where rules require a seconder, an amendment will stand where it has been put to the meeting and agreed upon without having been seconded (*In re Horbury Coal, Iron & Waggon Co., supra*). In practice, however, an amendment which is not seconded will usually (though not invariably) be dropped without consideration.

As a rule only one amendment may be moved to a given motion by one person, who can bring the whole of his proposal as to modification of the original proposition before the meeting within the scope of a single motion to amend. Moreover, the mover of the original motion is not himself entitled to move an amendment of it, although he may of course speak upon amendments proposed by other persons. Unlike the mover of an original motion, the person who moves an amendment has no right to reply to the discussion which it engenders.

The object of amendment being to modify the proposal before the meeting while preserving its main purport, a motion which obliterates the original motion entirely is not a true amendment. It is, however, often admitted as such where the substituted proposition is germane to the original one. Thus if the original motion is " that a solicitor be nominated by the Board, to deal with legal matters affecting the interests of the Company, and such solicitor shall be paid a retaining fee of £150 per annum and a special fee in respect of matters in which he is specifically instructed," and amendment might be received which moves that the words of the original motion after the word " that " be omitted and that there be substituted the following—" a duly qualified person shall be employed as private solicitor to the Company, under a service contract of three years' duration and at a salary not exceeding £750 per annum." Both motions are directed towards making provision for protecting the interests of the company concerned where legal issues arise, and the second may accordingly be regarded as a variant of the first although it envisages a fundamentally different arrangement.

Generally stated, an amendment may be described as a proposal to alter an original motion by (i) the omission, or (ii) the addition or interpolation of a certain word or words, or by (iii) the omission of a word or words *and* the addition of or interpolation of another word or other words, where such omission or addition or combination of both materially changes the sense of the motion to which the amendment is proposed. There would be no operative variation of the sense of the original motion employed as an illustration above, by the proposal to

insert the words "one hundred and fifty pounds" in parentheses after the statement of that sum in figures; but an amendment moving the omission of the word "legal" would introduce a considerable extension of the functions of the company's solicitor. The same effect would result from moving that the words "and general" be introduced after the word "legal" in the original motion.

Where a number of amendments are to be moved it is important that they should be considered by the meeting in due succession. Each amendment is independently voted upon, and no further amendment can be moved until the preceding one is disposed of. An amendment which is carried is deemed to render the terms of the original motion conformable to the ideas of the meeting up to and including the words of amendment. It follows that no subsequent amendment can be put to the meeting if its effect would be to vary the original motion at a point antecedent to the words already amended. Hence the chairman should examine together all the proposed amendments to a particular motion of which notice has been received and determine the order in which they should properly be put to the meeting, so that effect may be given to them as far as possible. No amendment can be considered which is inconsistent with an amendment already adopted or which reproduces an amendment previously rejected.

An amendment must be pertinent and relevant to the original motion and must, like that motion, be within the scope of the meeting. An amendment may be relevant to the original motion and yet outside the scope of the meeting. Thus if the notice convening the meeting states as an item of special business the appointment of a manager at a salary of £2,000 per annum, an amendment to substitute £3,000 for the sum stated in the notice, though not irrelevant, would be bad, as exceeding the limits of that which the meeting could properly consider. "How is it possible . . . to know how many shareholders abstained from attending the meeting, being satisfied that the arrangement, as it was proposed, was advantageous to them and being quite content to exercise no voice about it?" (*Clinch* v. *Financial Corporation*, 1868, L.R. 5 Eq. 450 at p. 481). It is not always an easy matter to determine whether a proposed amendment is *ultra vires* or not. In *Betts & Co., Ltd.* v. *MacNaghten* (1910) 1 Ch. 430, it was held that where the notice of a meeting contained notice of a motion to appoint specified persons to the board of a company, an amendment proposing different persons to fill the vacancies was valid.

In some cases a motion cannot be amended, but must be resolved upon or rejected in the form in which it is originally put, as e.g. a proposed extraordinary resolution for the voluntary winding up of a registered company.

Where amendment is possible, it must not purport merely to negative the original motion. Such an amendment does not in any way alter the question before the meeting, but simply inverts the presentation of the issues which the meeting is to consider; it invites the answers "no" or "yes" instead of the alternatives "yes" or "no," to the same substantial question. To frame an amendment in the form of a negative is thus futile and ineffectual, for supporters of such an amendment can accomplish their object with greater facility by voting against the motion in its original form. Moreover, to allow an amendment which seeks merely to negative the original proposition would produce a motion negative in form and open, therefore, to the objections indicated in § 1. In exceptional circumstances the introduction by amendment of a direct negative may be a means of expediting a decision. In Scotland this form of amendment is generally admissible.

The principle which requires that the chairman at a meeting should accept and put to the meeting all motions which concern the business to be transacted thereat, applies also to amendments. No amendment should be rejected save on one or other of the following grounds:—

(i) If is *ultra vires* the meeting, i.e. it is outside the scope of the meeting;

(ii) *Irrelevancy*, where it bears no relation to the original motion or its subject matter;

(iii) *Redundancy*, where it proposes something already resolved upon by the meeting;

(iv) *Inconsistency*, where it is incompatible with a decision previously made by the meeting;

(v) It is *vexatious*, and intended only to impede the transaction of business;

(vi) *Bona fide* exercise of the chairman's discretion, where by rules, standing orders or resolution of the meeting itself (e.g., kangaroo closure, *infra*, § 5) he is empowered to exclude certain amendments from consideration.

The improper refusal to put an amendment which has been duly moved and seconded will vitiate the decision of the meeting on the matter to which the proposed amendment relates (*Henderson* v. *Bank of Australasia*, 1890, 45 Ch.D. 330). As has been stated already, an amendment which has been moved must be disposed of before any other amendment to the same original motion can be moved. This makes it all the more important that notice should be given, where possible, of any projected amendment, so that it may be brought before the meeting in its apt place. An amendment to an amendment may, however, be moved before the principal amendment has been put to

the vote, in which case the secondary amendment must first be dealt with.

An amendment duly moved and seconded cannot be withdrawn without the consent of the meeting.

There are two alternative forms of procedure in dealing with proposed amendments, the general or "popular" method, and the parliamentary.

In the popular method each amendment as it is proposed is put to the meeting for discussion and vote. While an amendment is being considered, discussion is confined to the amendment itself. If the vote results in approval of the amendment, the terms of the original motion are varied accordingly, and the motion in its new form having been read to the meeting, discussion thereon will proceed unless another amendment is moved, in which case the same procedure is gone through in regard to it. If the amendment is rejected, the original motion (or that motion as altered by previous amendments which have been adopted) is restored and is open to discussion, subject, however, to the moving of further amendments. When discussion ceases, either because no further motions to amend are forthcoming or because debate has been terminated by one of the appropriate devices, the question for the meeting in the form it ultimately assumes is put to the vote and the decision of the meeting upon it finally taken. The defect in this procedure is that while amendments are under discussion debate on the main question is excluded, and the meeting is limited to consideration of what may well be subsidiary and side-tracking issues. No doubt the meeting will view each amendment in its relation to the original motion; but the merits of that motion as first moved cannot be fully expounded, for the interpolation of the amendment interrupts discussion on the prime motion. On the other hand, the popular method has the advantage of keeping separate the issues raised by different amendments, and possible confusion is thus avoided.

The parliamentary procedure is quite different. Its object is to prevent the main question from being shut out of discussion while am amendment is being deliberated. The artificial priority which the popular method confers on discussion of an amendment is obviated by putting to the assembly, when an amendment has been moved, a preliminary question. Where the amendment proposes that certain words be omitted from the original motion, the preliminary question is "that the words . . . do stand part of the question." If this is decided in the affirmative, the primary motion remains unchanged and, if no further amendments are proposed, it will be discussed in its original form. If the amendment proposes to add words to the

terms of the original motion, the preliminary question to be decided takes the form " that the words . . . be there inserted." The place at which the insertion is proposed is made apparent by first stating the original motion and then reading the amendment, as moved, to the meeting. If the question be affirmatively answered, the motion as altered is debated, subject to other amendments which may be proposed. A negative answer leaves the motion unaffected by that amendment and, again subject to any other amendments, the motion will be discussed in its original form.

§ 4. **Previous Question.** This may be moved in the course of discussion on the main question before the meeting, but not while an amendment thereto is being considered. Where an amendment is under discussion it must be disposed of before the previous question can be moved. The motion that the question be not now put must be taken before any, or any further, amendments, its object being to preclude discussion upon them. Subject to this, any member present may move the previous question provided he has not spoken upon the original question and no other person is speaking at the time of moving. If the motion is properly seconded, discussion on it (and on the main question) is permissible, but it cannot be subject to amendment in any form. It may itself be displaced from immediate discussion, however, by the motion to adjourn the meeting (see § 8, *infra*).

If the motion that the question be not now put is carried, the original question is removed from the scope of the discussion at that meeting and can be revived only by proposal at a subsequent meeting. On the other hand, if the motion is lost, the implication is that the meeting desires the substantive question to be put to the vote forthwith, and accordingly discussion thereon is stifled.

This formal motion derives its name from the fact that it creates an independent issue which must be decided previously to the main issue, namely whether the original motion should be put to the meeting at all.

The mover of the previous question has no right of reply to the discussion on that motion.

§ 5. **The Closure.** This is the simplest of the methods of curtailing debate, and first appeared in parliamentary procedure as a means of countering the tactics of an obstructionist minority who persistently protracted discussion to such length as seriously to impede the business of the House of Commons. In its primary form it consists in the motion " that the question be now put." After being moved and seconded, it is voted upon without debate. Subject to

any regulations affecting the conduct of a meeting, the chairman may refuse to put the motion on the ground that it is an infringement of the rights of the minority; but if, with the general support of the meeting, he *bona fide* allows it to be put, the court will not intervene on the application of the minority (*Wall* v. *London & Northern Assets Corporation, supra*). If the motion is put and carried, the debate which it interrupted is terminated, and the main question is forthwith put. Another form is the "Kangaroo" closure. The Speaker in the House of Commons (and, where specific regulations so provide, the chairman of a meeting) has the power to select, from a number of amendments, those which shall be discussed. In exercising this power the Speaker or chairman, as the case may be, will seek to make the amendments chosen representative of the views of different sections of the meeting.

Yet another variant of the closure is the "Guillotine." By resolution of the House of Commons (or, where so provided, of a meeting), a definite period of time is allocated to the discussion of each part of a Bill, or of each of a series of motions. At the end of the period allotted, discussion automatically ceases and the vote is then taken. The guillotine is sometimes referred to as a "closure by compartments," and is virtually peculiar to parliamentary procedure.

§ 6. **Next Business.** In this case the motion is a dilatory one in the terms that "the meeting proceed to the next business." The object is to delay or preclude a decision by the meeting on the main question. It differs from the previous question in that it may be moved at the close of any speech, even during the discussion of an amendment; if it is rejected, moreover, the main question is not put immediately, but discussion on the main issue continues. The motion to proceed to the next business cannot be moved again during the same discussion or for a given period of that discussion, depending upon the regulations to which the meeting is subject. Standing orders generally provide that during the same debate a second motion that the meeting do proceed to the next business shall not be made within, e.g., half an hour.

§ 7. **Adjournment of Debate.** Discussion of a particular question may be delayed either for a specified time or indefinitely by motion to adjourn the debate. The acceptance of this motion by a meeting does not affect its general proceedings save in relation to the particular matters under discussion at the time it is moved. The postponement of debate on those matters will be in accordance with the terms of the motion to adjourn. The motion may be moved by any person other

than the mover or seconder of the main question then before the meeting, or the mover or seconder of any amendment or formal motion in reference thereto. Discussion on the principal question or amendment must give way to the motion for adjournment provided it is duly moved and seconded, when it becomes an independent question for the meeting. Consideration of the motion is subject to the ordinary rules as to debate with the following modifications:—

(i) The mover has no right to reply, though he is usually accorded the privilege of re-introducing discussion on the suspended question when the terms of the resolution to adjourn permit.

(ii) No amendment is possible save as regards the period of suspension or the time to which discussion is to be postponed, or the place to which adjournment is proposed.

(iii) If rejected by the meeting, a second motion for adjournment may be moved during the same meeting after the lapse of a reasonable time or such period as may be specified by standing orders or other regulation (cf. the motion to proceed to the next business).

Business which has been adjourned is normally taken at the next available meeting after minutes have been dealt with (see pp. 57–8) but before any fresh matters are transacted.

§ 8. **Adjournment of Meeting.** The adjournment of the meeting is a more drastic measure than any of the suspensive devices so far considered, for it operates to bring about a suspension of the entire proceedings either for a particular period or indefinitely.

An adjournment may be:—

(i) *Sine die*, i.e. for an unspecified period of indefinite duration; or,
(ii) For an unspecified period not exceeding a given maximum; or,
(iii) Until a date specified, or for a fixed interval of time; or
(iv) To another place; or
(v) For a given time and to a named place.

A meeting which is voluntarily convened, in the sense that there is no duty to hold it and those invited have no material interest in the business of the meeting, may be adjourned (or dissolved) at any time at the will of the conveners or of the chairman whom they appoint to preside. Where a meeting is concerned with public or private interests, arbitrary adjournment is not possible, for the meeting is entitled, if it so desires, to pursue to their conclusion, without any interruption, the objects for which it was convened. An adjournment may, however, be brought about in one or other of the following ways:—

(a) BY RESOLUTION OF THE MEETING

At Common Law, an assembly is deemed to be invested with the power to adjourn its proceedings of its own volition. "The right is in the assembly itself; for if they be an assembly all consisting of equals, and there be no custom or rule of law to direct the adjournment, the right must be in the persons which constitute the assembly" (per Lord Hardwicke in *Stoughton* v. *Reynolds*, 1737, Fortescue's Rep. 168). Even where the constitution of a corporation requires that certain matters *must* be transacted on a particular day, there is necessarily implied a power to adjourn so as the enable business which could not be finished for lack of time on the day fixed to be brought to its conclusion (*Rex* v. *Carmarthen Corporation* I.M. & S. 697); and this inherent power exists also where it is not possible to transact the whole of the business for which a meeting has been called (*Kerr* v. *Wilkie*, 1860, 6 Jur. [N.S.] 383).

The Common Law right of an assembling body to adjourn its meetings may be restricted by express regulation in the constitution of that body. Thus where the articles of association of a company provided that "the chairman may with the consent of the members present at any meeting adjourn the same . . ." it was held that the members in general meeting were deprived by that provision of the right to adjourn by resolution (*Salisbury Gold Mining Co.* v. *Hathorn*, 1897, A.C. 268). "Upon the true construction of the article the chairman is not bound to adjourn the meeting even though a majority of those present desire the adjournment" (*ibid.* at p. 274). It is to be emphasised that this decision lays down no general principle beyond recognising that the Common Law right of the majority of an assembling body to adjourn its proceedings may be limited or excluded by the specific regulations governing that body. Whether, and to what extent, such limitations arises by virtue of specific regulations is a question of construction to be decided (as in the case cited) from the language of the relevant provisions.

In so far as a meeting is empowered to adjourn its proceedings, that power is exercised by resolution to adjourn the meeting. The motion to adjourn may be proposed at the close of any speech, but cannot be moved by a person who has already spoken on the question then before the meeting or who has moved or seconded an amendment or formal motion in relation to it.

As in the case of the motion to adjourn the debate, when the motion to adjourn the meeting has been duly proposed and seconded, it creates an independent question for the immediate consideration of the meeting. Discussion on the substantial question is displaced until the motion

to adjourn has been decided upon. If the previous question has been moved, it must also give way to the motion to adjourn the meeting.

Discussion on the motion to adjourn is governed by the ordinary rules as to debate but,

(i) The mover has no right of reply;

(ii) No amendment is permissible other than alteration of the time or place of adjournment (or both);

(iii) Subject to specific regulations affecting the meeting, the motion to adjourn may be renewed after the lapse of a reasonable time in the course of the same meeting.

(b) BY ACTION OF THE CHAIRMAN

As has been stated, the conveners or the chairman of a meeting which is not held in pursuance of some specific duty or right may at any time adjourn or dissolve it, and such meetings need not be further considered. In other cases the chairman cannot, unless expressly authorised by the particular regulations governing the meeting, adjourn it except in accordance with the wish of the meeting (*Stoughton* v. *Reynolds*, 1737, Fortescue's Rep. 168). It may be also that where a meeting is in such disorder that the transaction of any business is impossible, the chairman has an implicit power to adjourn for such period as is reasonably necessary to restore a sufficiently tranquil atmosphere for the proceedings to continue. This course should not, however, be resorted to save in exigent circumstances which leave no room for the suggestion that the chairman was actuated by some arbitrary motive or bias. The decision in *Stoughton* v. *Reynolds* " by no means interferes with the right which every chairman has to make a *bona fide* adjournment whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe or seriously difficult for the voters to tender their votes. . . . In most of such cases, the question will turn upon the intention and effect of the adjournment; if the intention and effect were to interrupt and procrastinate the business, such adjournment would be illegal; if, on the contrary, the intention and effect were to forward and facilitate it, and no injurious effects were produced, such adjournment would, it is conceived, be generally supported " (*Rogers, Eccl. Law*). This view is borne out by the decision in *Rex* v. *The Churchwardens of St. Mary's, Lambeth* (1832, 1 A. & E. p. 346), where it was held that the adjournment of a meeting by the chairman without notice for the purpose of taking a poll was proper. The evidence in that case suggested that the adjournment was on the ground that the poll could not be taken where the meeting was initially held " from the nature of the place and the numbers and tumultuous state of the meeting."

Apart from special provision or exceptional circumstances, however, the chairman cannot interrupt or postpone the business of a meeting by an adjournment not consented to by the meeting. " It is not within the scope of the authority of the chairman . . . to stop the meeting at his own will and pleasure. . . . He presides with reference to the business which is then to be transacted. In my opinion, he cannot say, after that business has been opened, ' I will have no more to do with it; I will not let this meeting proceed; I will stop it; I declare the meeting dissolved, and I have the chair.' In my opinion that is not within his power. The meeting by itself . . . can resolve to go on with the business for which it has been convened and appoint a chairman to conduct the business which the other chairman, forgetful of his duty or violating his duty, has tried to stop " (*National Dwellings Society* v. *Sykes*, 1894, 3 Ch. at p. 162 per Chitty J.).

An improper adjournment by the chairman does not affect the existence of the meeting (*Shaw* v. *Thompson*, 1876, 3 Ch.D. 233 at p. 249); it continues in progress, and may therefore elect a new presiding officer where the chair has been vacated (*Catesby* v. *Burnett*, 1916, 2 Ch. 325).

If the notice convening a meeting states that it will in certain circumstances be adjourned, the notice is regarded as embracing any adjournment in the circumstances stated. Accordingly when those circumstances occur, the chairman may declare the meeting adjourned in accordance with the terms of the notice, even though a majority object to the adjournment (*Rex* v. *Archdeacon of Chester*, 1834, 1 A. & E. 342). In this case the notice of a vestry meeting specified that in the event of a poll being demanded, an adjournment would be made from day to day to enable the poll to be taken. It was held that " the notice was binding upon the meeting and that the chairman was authorised to adjourn in furtherance of it; for no business was interrupted and *the adjournment was in pursuance of the original appointment* " (See also *Baker* v. *Wood* 1 Curt. 507). The decision in the later case of *Reg.* v. *D'Oyly*, 1840, 12 A. & E. 139, appears to extend the powers of the chairman so as to authorise him to declare an adjournment where that is necessary to achieve the objects of the meeting in spite of the absence of any special regulation or any provision for adjournment in the notice convening the meeting. In the course of his judgment, Lord Denman C.J. stated (at p. 159) " it is on him (the chairman) that it devolves both to preserve order in the meeting, and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts *necessary for these purposes* on his own responsibility, and subject to being called upon to answer for his conduct if he has done anything improperly." This also was a case in

which the meeting was adjourned by the presiding officer against the wishes of the meeting, but solely with a view to taking a poll which had been demanded. No undue or unjustified interruption of business was occasioned. The dicta of Lord Denman quoted above are not to be liberally interpreted.

An adjournment may always be effectively declared in accordance with any specific provision in the rules, standing orders or other regulation of the convening body. Such express provision must, however, be stringently complied with in order that the adjournment may be valid.

Wherever a meeting has concluded its business, the presiding officer or chairman may adjourn or dissolve it. His duty is to declare the meeting closed when its proceedings have been brought to their termination but not before (*Shaw* v. *Thompson, supra*).

(c) BY FAILURE TO MAKE A MEETING

It has been seen that until a quorum is present no meeting technically exists. In practice a reasonable period is allowed after the time specified for the holding of the meeting for the assembly of a sufficient number to constitute a proper meeting which satisfies the regulations applicable to the assembling body. Strictly speaking, if a quorum has not assembled at the precise time fixed for the commencement of the meeting, the meeting fails and those present are not competent to resolve upon its adjournment. Fresh notices will, therefore, have to be sent out if it is desired to proceed with the business for which the meeting was convened. It is usual, however, for special provision to be made by standing orders, articles of association or whatever form of regulation governs the proceedings, that if a quorum be not present within a certain period after the time fixed for the commencement of the meeting, it shall stand adjourned. For example, Clause 46 of the First Schedule to the *Companies Act*, 1929, provides as regards registered companies to which the regulation applies, that "if a quorum is not present within half an hour from the time appointed for a meeting . . . it shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall form a quorum."

(d) BY FAILURE TO KEEP A MEETING

If at any time during the course of a meeting properly constituted at its commencement, a quorum ceases to be present, the meeting cannot proceed further, and must adjourn when the deficiency becomes

apparent (*Henderson* v. *Louttit*, 1894, 21 Rettil 674). Any person present is entitled to raise as a point of order the absence of a proper quorum, and thereupon the chairman should require a count to be taken. If this confirms that the appropriate minimum is not present, the meeting is " counted out," and regulations generally provide that the meeting shall then stand adjourned.

An adjourned meeting is part of the original meeting which it continues (*Scadding* v. *Lorant*, 1851, 3 H.L. Cas. 418), and this is so notwithstanding that fresh notices have been sent out for the adjourned meeting, so long as the original meeting was not dissolved (*Rex* v. *London Corporation*, 1829, 9 B. & C. 1; *and see infra*). It is not essential that notice of an adjourned meeting should be given (*Kerr* v. *Wilkie*, *supra*), but nothing can be transacted without notice at the adjourned meeting except the unfinished business of the original meeting (*Reg.* v. *Grimshaw*, 1847, 10 Q.B. 747, *and see* p. 55). As an adjourned meeting is identified with the original one, it follows that any defect in the convention of the original meeting will render the adjournment also irregular (*Re Portuguese Consolidated Copper Mines Ltd.*, 1889, 42 Ch.D. 160).

The adjournment of a meeting is to be distinguished from its postponement. An adjournment denotes the suspension of debate or of the entire proceedings and, therefore, assumes that the proceedings have once commenced. Postponement, on the other hand, is used to indicate that the commencement of a meeting is itself deferred. It is doubtful whether a meeting of an assembling body when once convened can be postponed in this sense. The proper course is for the meeting to be held and adjourned as circumstances require. In *Smith* v. *Paringa Mines Ltd.*, 1906, 2 Ch. 193, a notice was issued purporting to postpone the holding of a general meeting of shareholders which had previously been duly convened. One of the directors of the company who was in disagreement with the remainder of the Board attended the meeting together with several shareholders. It was held that resolutions passed at the meeting were valid and effective, as the postponement of the meeting was inoperative without special power to postpone being given by the regulations governing the meeting.

The cancellation of a meeting could not, of course, be challenged where the meeting is one which persons have no specific right to attend or are under no specific duty to convene.

The adjournment of a meeting, again, is not to be confused with its dissolution. When the business of a meeting has been fully accomplished, the chairman is entitled to dissolve the meeting. The effect of dissolution is that the meeting no longer exists as such. Its proceedings are not merely suspended, but exhausted. Dissolving a meeting

differs from postponement of it, in that the first operation brings a meeting to an end, while the second prevents it (for a time) from beginning; Adjournment produces neither of these consequences, although an adjournment *sine die* may ultimately approximate, for practical purposes, to a complete dissolution.

§ 9. **Miscellaneous Suspensive Motions.** Other forms of motion which, in certain circumstances, may aptly be used to suppress or suspend discussion are the following:—

(i) Motion "that the question lie on the table," or, where the matter under discussion is contained in a document, "that it be laid on the table." The effect of the adoption of such a motion is that the question is put aside from consideration by the will of the meeting, but may be restored to active discussion as the meeting desires. It thus differs from the resolution to proceed to the next business, which excludes the question which it interrupts from further discussion at the same meeting. The motion that the question lie on the table is employed where the meeting is not disposed, for the time being, to adopt a decisive attitude towards the main issue.

(ii) Motion "that the matter be referred back to committee." Where the question before the meeting arises from the findings and recommendation of a committee to whom certain matters have been referred for investigation or inquiry, a method of rejecting the committee's findings or recommendations while keeping the matter alive, is to refer the question back to the committee. "Reference back" may be as final as explicit rejection of the committee's findings or recommendations or both, but it provides an opportunity for revision where new facts have emerged or the implications from existing facts have become more plainly perceivable.

(iii) Motion "that the chairman leave the chair." This is a variant of the motion to adjourn the meeting. If carried, the adjournment takes effect *sine die*, or, in the case of a regularly recurring meeting, until the next assembling date. It differs from the ordinary motion to adjourn, in that, as no time or place is specifically fixed by the resolution "that the chairman leave the chair," for that adjourned meeting, no amendment whatsoever is possible. Where it is not desired to adjourn the meeting, but to replace the chairman, the motion is not appropriate, the proper form being "that X.Y. do take the chair."

§ 10. **Rescission of Resolutions.** A meeting which has resolved upon a certain issue cannot at the same meeting (which will include any

adjournment of it) extinguish the effect of that reduction by a second resolution purporting to rescind or reverse the first.

Apart from the commonsense of this principle, it accords with the rule that a question decided by a meeting cannot be reopened by a subsequent motion at the same meeting.

It is, however, possible, though not in all cases, for a resolution at a meeting to be passed rescinding matters transacted at a previous meeting. Whether such rescission can be validly effected or not depends upon the circumstances. Among the factors to be considered are the nature of the original resolution passed, the character and composition of the meeting and the status of the resolving body, as well as the regulations which govern its proceedings. If specific provision is made for the rescission of resolutions, the prescribed procedure must be stringently observed or the purported rescission will be ineffective (*Rex* v. *Tralee Urban District Council*, 1913, Ir. K.B. 59).

CHAPTER VIII

VOTING AND SENSE OF MEETING

THE sense of a meeting, that is to say its view, or opinion, or attitude, or intention, or will, in regard to a question before it, is ascertained by taking a vote. This process consists in the numerical alignment of those who favour and those who disapprove a proposition put to the meeting. The numerically preponderant view (the " majority ") is deemed to represent the true sense of the meeting.

§ 1. **Voting.** At Common Law, every person voting at a meeting is reckoned as one vote, and the method of counting votes is primarily by show of hands (*Rex* v. *Rector of Birmingham*, 1837, 1 A. & E. 254 at pp. 259, 260), i.e. counting the persons who manifest their views by raising their hands in response to the request of the chairman that " all in favour signify by raising their right hand," and similarly for " those against." The parliamentary method is, in the first instance, vocal, the Speaker or chairman asking those in favour to say " Aye," and those against to say " No." The volume of the respective responses is adopted by the Speaker or Chairman as indicating the sense of the assembly and he expresses his decision in the formulae " The Ayes have it," or " The Noes have it," as the case may be. If that decision is challenged, " tellers " are appointed and the House divides. The members go into different lobbies according to the views they hold and are counted in passing through the lobby exits.

The Common Law method of voting by show of hands so that each voter is accorded one vote must prevail unless there exists, in some form, provision to the contrary (*Re Horbury Bridge Coal, Iron and Waggon Co.*, 1879, 11 Ch.D. 109). At Common Law, moreover, any voter has a right to demand a poll which is a necessary incident to the mode of election by show of hands (*Anthony* v. *Seger*, 1789, 1 Hag. Con. 9). The taking of a poll consists in a more meticulous counting of the " polls " or heads of the voters than is possible on a show of hands where the number of voters is large, and enables persons entitled to vote but who do not attend a meeting to participate in its decisions (see § 4, *infra*). A demand for a poll is a means also of challenging the declaration of the chairman of the result of the vote upon a show of

hands. The chairman's declaration need not go beyond stating that the motion is carried or lost without revealing the number of votes cast on each side. The result of a vote upon a show of hands may be impugned by evidence which affirmatively establishes that it was erroneously declared, unless, as is usual, there is an express regulation to the effect that the declaration of the chairman shall be conclusive. Thus, as regards general meetings of shareholders, it is provided that at any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that a resolution is *carried* shall, *unless a poll is denounced*, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution (*Companies Act*, 1929, Section 117 [3]). The effect of such a provision is to render the declaration of the chairman (where no poll is demanded) indisputable, at any rate in the absence of fraud, and the court will not go behind it by inquiring into the facts (*Arnot* v. *United African Lands Ltd.*, 1901, 1 Ch. 518). Where, however, the chairman's declaration shows, on the face of it, that the resolution has not been supported by a majority, or by the appropriate statutory majority (e.g. in the case of a special resolution), the declaration that the resolution has been passed is not conclusive (*Re Caratal* [*New*] *Mines*, 1902, 2 Ch. 498).

If, on a show of hands, the chairman states the voting but expresses doubt as to the accuracy of the count and directs a recount, which is at once taken, he is not bound by his first statement of the voting, but may properly base his declaration on the result of the recount (*Hickman* v. *Kent or Romney Marsh Sheepbreeders' Association*, 1920, 37 T.L.R. 163). No authoritative decision exists as to whether an error on the part of a voter in giving his vote can be corrected. Where the result has been declared, the voting is regarded as closed and retraction or variation by a voter on the ground of mistake is no longer possible. Before the declaration of the result of voting, the chairman may exercise his discretion, unless there is an express regulation which deals with the position.

The wrongful rejection of votes tendered by persons entitled to a voice in the proceedings may be a ground for setting aside a resolution or election affected by the exclusion of *those* votes; but not if the rejection has made no difference to the result (*Ex parte Mawby*, 1854, 3 E. & B. 718). The wrongful admission of votes of persons not entitled to cast them may produce similar consequences. The constitution of the assembling body may, however, provide that no objection shall be made to any vote except at the time when it is tendered, and that every vote not then disallowed shall be deemed to be valid for all purposes whatsoever. In such a case a vote irregularly received will

stand (*Colonial Gold Reef Ltd.* v. *Free State Rand Ltd.*, 1914, 1 Ch. 382).

The method of voting by ballot may here also be noticed. It takes the form of indicating by mark or inscription on a voting paper or instrument on which side a vote is exercised. The side to which support is given by a voter is concealed from other persons. This has the merit of preventing influence in directing the exercise of a voter as at an election, but the disadvantage of making scrutiny difficult.

§ 2. **Casting Vote.** In some bodies, by virtue of specific provision, the chairman of a meeting is entitled to exercise a second or casting vote. This is a vote vested in him in his capacity as chairman, and is exercisable independently of any voting power which he is entitled to exercise as a member of the meeting. Where the chairman does not vote in the first instance, and there is an equality in the voting, he may determine the issue by exercising his original right to vote. This is not, however, a "casting vote," the expression being applied only to a second vote (*Nell* v. *Longbottom*, 1894, 1 Q.B. 767).

At Common Law a chairman has no casting vote (*Bishop of Chichester* v. *Harward*, 1787, 1 T.Rep. 650). Where it exists, it arises from express provision in that regard. The casting vote can (subject to the regulations creating it) be exercised whenever there is an equality of votes for and against a particular issue, and (probably) in any other case where its employment would have decisive consequences, as e.g. where the chairman's casting vote will make up the necessary majority to pass an extraordinary resolution of shareholders. A casting vote can be given, as a rule, only after the chairman has given his ordinary vote, but the second vote may be contingently given where an equal division is anticipated. The casting vote then becomes operative only if without it the apprehended equality of voting arises.

The chairman has a discretion as to how he uses the casting vote or whether he uses it at all. It is generally regarded as impolitic to employ it where there is an exact division of opinion at a representative meeting, for if (without the casting vote) there is no *majority* in favour of a proposed motion, the preservation of the *status quo* would appear desirable. If the chairman elects to cast his second vote, it is not incumbent upon him to use it in the same way as his first vote.

Inter alia, the chairman of county councils and statutory companies are endowed with the right to give a casting vote.

§ 3. **Majority.** At Common Law, a majority of votes is constituted by a bare numerical preponderancy, i.e. by there being at least one more vote on the one side than on the other. In certain

bodies, however, and in relation to particular matters, artificial majorities of varying complexity are required by statute or standing orders or other regulation. Thus in order to pass an extraordinary resolution of a company, the majority must consist in the votes of three-fourths of those present and entitled to vote and voting; while for the effective approval by creditors of a composition in bankruptcy, the majority must comprise three-quarters *in value* of all the creditors who have proved their claims, as well as a simple majority of the individual creditors.

§ 4. **Poll.** The process of voting by show of hands clearly requires implementation where an assembly is large. At Common Law, therefore, every person entitled to vote at a meeting and being present thereat may demand that a poll be taken. The process of taking a poll consists in the recording of votes in some documentary form by mark or otherwise (*Reg.* v. *How*, 1863, 33 L.J.M.C. 53). The time for making the demand is immediately upon the conclusion of taking the vote by a show of hands or whatever alternative method is prescribed by regulation (*Reg.* v. *Vicar of St. Asaph*, 1883, 52 L.J.Q.B. 672). The Common Law right to demand a poll exists implicitly, and is excluded only by express provision to that effect (*Reg.* v. *Wimbledon Local Board*, 1882, 8 Q.B.D. 459) or special custom (*Campbell* v. *Maund*, 1836, 5 A. & E. 865). The mere fact that at meetings of a certain body no poll has ever been demanded, does not establish a special usage excluding a poll at such meetings (*ibid.*).

The proper person to grant a poll is the presiding officer at the meeting (*Reg.* v. *D'Oyly*, 1840, 12 A. & E. 139).

A poll is tantamount to an appeal by a party dissatisfied with the decision of the chairman upon the show of hands (*Campbell* v. *Maund*, 1836, *supra*). The result of a demand for a poll is that the previous proceedings, so far as voting is concerned, are abandoned and a nullity. The effective voting then begins with the poll (*Anthony* v. *Seger*, 1789, 1 *Hag.* Con. 9). It is therefore essential, if the sense of a meeting is to be determined at all, that on a demand for a poll being duly made the poll should be actually taken. In *Reg.* v. *Cooper*, L.R. 5 Q.B. 457, the defendant was elected to the office of waywarden on a show of hands. A poll was demanded by supporters of the only other candidate, but before it was taken the defendant announced that he declined to stand as waywarden. In these circumstances the poll was not held, and subsequently the chairman declared that the defendant election stood. It was held that there had been no election.

A poll may be taken, in the absence of regulation to the contrary, immediately upon demand being made (*Re Chillington Iron Co.*, 1885,

29 Ch.D. 159). Where, however, the articles of a company provided that all questions were to be decided by show of hands at general meetings unless a poll was demanded, in which case the poll was to be held at a time and place to be fixed by the directors within seven days from the meeting, the taking of a poll immediately upon its being demanded was not in accordance with the articles and was therefore improper (*Re British Flax Producers Co. Ltd.*, 1889, 60 L.T. 215). It should be noted that in the case last cited objection was taken to the poll by creditors of the company and not by members. On the other hand, where a poll is irregularly demanded but is in fact taken without objection, the irregularity is waived so far as those entitled to vote are concerned, and the poll is valid (*Campbell* v. *Maund*, *supra*). If a poll is duly demanded and is refused, the resolution or election in respect of which the poll was sought is rendered imperfect (*Ex parte Grossmith*, 1841, 10 L.J.Q.B. 359).

Apart from the difference in the method of counting votes, a poll differs from a vote upon a show of hands in that:—

(i) Persons not present at the voting upon which the poll is sought may participate in the voting on the poll itself. This follows from the principle that the poll is merely an enlargement of the meeting at which it was demanded, so that all persons who were entitled to attend that meeting may take part in the poll when held (*Reg.* v. *Wimbledon Local Board*, 1882, 8 Q.B.D. 458).

(ii) Where persons are entitled to cast more than one vote, as, for example, where proxies are held from other voters, all the votes are counted upon the poll. On a show of hands, no person can exercise more than one vote even though he is entitled to a vote in his own right and also in a representative capacity (*Ernest* v. *Loma Gold Mines Ltd.*, 1897, 1 Ch. 1).

Where, in pursuance of powers vested in him, a presiding officer or chairman announces that a poll will continue for a certain time, he cannot thereafter prolong it (*Reg.* v. *Churchwardens & Overseers of Sutton, Lancashire*, 1864, 29 J.P. 56). On the other hand, a chairman has no power to close a poll on account of disturbance (*Reg.* v. *Graham*, 1861, 25 5 P. 437).

Apart from provision fixing the duration of a poll, as e.g. in the discretion of the presiding officer, it must continue for a reasonable period, regard being had to the number and situation of the voters and other relevant factors (*Rex* v. *Bishop's Consistory Court of Winchester* 1806, 7 *East* 573).

The purpose of a poll being to ascertain the actual voting upon a resolution or election, it must not be so taken as to prevent scrutiny,

and must not therefore be taken by ballot. A voter is not, however, entitled to demand a scrutiny (*Re Hammersmith Vestry, Ex parte Stevens*, 1852, 16 J.P. 632).

The Common Law principles governing demand for and the taking of a poll are subject to any specific regulations in the constitution of the voting body (see Part III, Chapter XIII as to registered companies and Part IV as to local authorities).

§ 5. **Proxies.** A proxy is a "lawfully constituted agent" (*Re English, Scottish & Australian Bank*, 1893, 3 Ch. 385). The term is used also to denote the instrument conferring authority upon the agent (the donee of the proxy) to act on behalf of the principal (the donor of the proxy).

There is, at Common Law, no right to vote by proxy or substitute (*Harben* v. *Phillips*, 1883, 23 Ch.D. 14). Where the right exists it arises out of express regulation, whether by statute or otherwise. At a meeting to approve a compromise or arrangement between a company and shareholders or creditors under Section 153 of the *Companies Act*, 1929, there is a statutory right to vote by proxy. The right is generally given also by the articles of association of a company in respect of voting at meetings of shareholders. Where it is sought to exercise the right to vote by proxy, the regulations creating the right must be strictly observed, for apart from them there can be no right at all to vote vicariously (*McLaren* v. *Thomson*, 1917, 2 Ch. 261).

The nature and extent of the authority conferred upon a proxy to vote on behalf of the donor of the authority will depend upon the terms of the instrument appointing the proxy and upon the regulations whereunder he is appointed. A proxy authorising the donee to vote only upon a particular resolution is termed a "special" proxy, while one which gives a power to vote upon all proposals relating to a specific subject-matter, or at any meeting on any matter, is styled a "general" proxy. The provisions governing the assembling body may require, where voting by proxy is allowed, that the donee of a proxy should possess some specific qualification or capacity. Thus the articles of association of a company may, when giving a right to vote by proxy, provide that the donee of a proxy must himself be a member of the company.

As in the case of any agent, the authority of a proxy to vote on behalf of the principal may be revoked at any time before the authority is effectively exercised. The right of revocation (like the right to confer a proxy) is, however, subject to any relevant regulations of the body concerned. These may provide, for example, that votes cast in pursuance of a proxy duly given should be valid notwithstanding the

previous revocation of the proxy, provided no intimation in writing of the revocation shall have been received before the meeting (see *Cousins* v. *International Brick Co. Ltd.*, 1931, 2 Ch .90). In the absence of clear and express provision, however, the right of a voter to exercise his vote in person, after having given a proxy in respect of that vote, continues notwithstanding that the proxy has not been revoked in accordance with the regulations of the assembling body; the proxy cannot, therefore, purport to exercise the authority originally given him if the donor chooses to attend the meeting and to vote according to his own volition (*ibid.*). The decision last cited must not be taken as an authority for the proposition that the donor of a proxy may in all circumstances assert a right paramount to that of the donee of the proxy. The regulations of a deliberative assembly might, by apt language, produce the result that a person who has given a proxy, and has not revoked it in accordance with the regulations of that body, is disabled from voting personally. " The articles might be so drawn . . . but when I examine these three articles I find no such exclusion of the personal right of the shareholder to vote " (*ibid.*, at p. 101, per Lord Hanworth, M.R.).

The donee of a proxy can cast only one vote on a show of hands even though he may be entitled apart from the proxy to vote in his own right (*Ernest* v. *Loma Gold Mines Ltd.*, 1897, 1 Ch. 1). All proxy votes are, however, counted on a poll being taken.

There is no general provision which demands that a proxy be appointed in writing, but specific regulations invariably require a written instrument or proxy paper. Such an instrument must be stamped with a 1d. stamp (*Stamp Act*, 1891, Section 80 and 1st Sched.). An adhesive stamp used on a proxy instrument is sufficiently cancelled by making on it any marks of a defacing nature (*McMullen* v. *Sir Alfred Hickman S.S. Co., Ltd.*, 1902, 71 L.J. Ch. 766). In the case of a power of attorney or general proxy a 10/- stamp is required.

Since an agent cannot (as a rule) act on behalf of his principal in matters outside the scope of the authority given, a proxy which is given for a specific purpose cannot be used for a different purpose (*Howard* v. *Hill*, 1888, 59 L.T. 818). In the case last cited, proxies were given in 1886 by a person entitled to vote on a projected election at which X and Y were candidates. The election was subsequently abandoned, as Y withdrew his candidature. It was held that the proxies so given were properly rejected at an election in 1887 whereat X and Y were the candidates.

The same case decided that the date of the meeting for which a proxy is to be used may be inserted when ascertained after the execution of the proxy. The date so inserted must, however, be the date of the meeting contemplated by the donor of the proxy at the date of

execution. In *Sadgrove* v. *Bryden*, 1907, 1 Ch. 318, the donee of a proxy was deemed competent to fill in the date of execution as well as the date of the projected meeting when authorised so to do by the donor of the proxy, provided, however, the proxy paper was duly stamped at the actual time of execution.

The funds of a corporate body may properly be employed in issuing, stamping and circularising proxy forms to members so long as this power is exercised *bona fide* in the interests of the corporation (*Peel* v. *L.N.W. Rly.*, 1907, 1 Ch. 5).

§ 6. **Minutes.** Except where the purpose of a meeting is ephemeral, it is expedient (though not at Common Law imperative) that there be kept in some permanent form a record of the matters transacted at it. The mere recollections of those present at the meeting as to what was orally effected are not only apt to become vague and inconsistent, but are, even where accurate, subject to facile impugnment unless supported by more tangible evidence. The objective results of the deliberations of an assembly are, therefore, detailed in the form of minutes which consist in a written record of the decisions of that assembly. These minutes must be distinguished from a report of a meeting. A report is an account of what transpires at a meeting and narrates, in greater or less detail, the whole course of the proceedings, including the discussion upon the various matters considered, comments by the chairman and so on. The minutes are concerned only with recording the fact that a meeting was held and that certain decisions were arrived at by the meeting. The minutes will accordingly state in relation to the meeting its records:—

(i) The nature of the meeting.

(ii) The time and place at which it was held.

(iii) How the meeting was constituted, i.e. who occupied the chair and what other persons were present.

(iv) What persons (e.g. solicitor, paid officials) were in attendance though not present as members of the meeting.

(v) The full terms of resolutions adopted.

(vi) Appointment of officers and their salaries.

(vii) The subject matter of financial and contractual transactions considered by the meeting.

(viii) Generally, all specific business upon which decisions were taken.

It is usual for the minutes of a meeting to be written up after the meeting has been terminated. It has been held that where the regulations governing a meeting require that minutes should be kept, the

minutes book may be transcribed from rough notes taken at the time of the meeting (*Re Jennings*, 1851, 1 I. Ch. Rep. 236). The minutes, having thus been written up after the meeting to which they relate, are read at the next following meeting, which is invited to "confirm" them. Confirmation is not an accurate term in this connection, but it is commonly employed. A meeting asked to confirm the minutes of the preceding meeting is simply called upon to approve them as being a true record. This is merely a formal procedure, and does not invest the subsequent meeting with the function of confirming the substantial matters transacted at the preceding one. Confirmation in this sense is unnecessary unless demanded by some exceptional regulation; and, on the other hand, refusal to confirm the record of what was in fact resolved upon at the preceding meeting does not detract from the validity and force of the resolutions actually passed. It follows that the discussion permissible on a motion to confirm the minutes is only as to their accuracy as a record, and not as to the propriety or validity of what they record. The process of verification is not essential, but it adds to the cogency of the minute book as evidence of what was transacted. Upon adoption of the minutes as an accurate record, they are signed for the purpose of authentication by the chairman. The signature need not be written at the meeting to which the minutes relate (*Southampton Dock Co.* v. *Richards*, 1 Man. & Cr. 448; *Re Llanbarry Haematite Iron Co., Roney's Case*, 1864, 4 De G.J. & Sur., 426).

Where statutory regulation demands that minutes should be kept (as in the case of general meetings of a company) they are given statutory force as evidence, provided, however, the statutory requirements such as signature by the chairman are duly fulfilled. Thus Section 120 (2) of the *Companies Act*, 1929, provides as regards a general meeting of shareholders that a "minute if purporting to be signed by the chairman of the meeting at which the proceedings were heard, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings."

It will not, of course, be supposed that the recording and adoption of minutes render them irrefutable and conclusive. They are *prima facie* evidence only, and do not establish beyond the possibility of contention that events not recorded did not occur, and that all matters recorded did in fact take place. A resolution not minuted may be proved by other evidence (*Knight's Case*, 1867, L.R. 2 Ch. 321; *Re Fireproof Doors Ltd.*, 1916, 2 Ch. 142). Moreover, the fact that proceedings are entered in the minutes is not conclusive that those proceedings were regular, and does not preclude inquiry into the adequacy of the notice convening the meeting (*Betts & Co.* v. *Macnaghton*, 1910, 1 Ch. 430). Even where the constitution of an assembling body

provides that minutes duly approved and signed shall be conclusive as to their accuracy, this will not prevent their being challenged by persons who are not members of that body and are not bound by its regulations.

If minutes are to have greater weight as evidence than mere recollection, they must be made within a reasonable time after the meeting to which they relate (*Toms* v. *Cinema Trust*, 1915, W.N. 29).

In the case of bodies of which plenary meetings are held only at long intervals, as e.g. the Annual Meeting of a club, the minutes should be verified at the end of the meeting which they record, or, alternatively, an executive committee should be authorised to verify the accuracy of the minutes at the first committee meeting held after the annual meeting.

Where, by law, minutes must be entered in a " book " (see e.g. Section 120 [1] of the *Companies Act*, 1929), a loose-leaf book from which sheets may be removed or in which leaves may be interposed will not satisfy the requirements of the law. In general, however, no particular form is prescribed for the keeping of minutes. They will be adequate if they present a clear, accurate and concise but complete record of the business transacted at a meeting.

PART III
COMPANY MEETINGS

CHAPTER IX

CONSIDERATIONS AFFECTING COMPANIES

IN this Part of the book the expression "company" is used in the sense defined by Section 380 of the *Companies Act*, 1929. References to "the Act" or "the *Companies Act*" or to a Section where no statute is indicated are to be understood as referring to that enactment.

§ 1. **Meaning of Company.** By the Section cited, "company" means a company formed and registered under the Act or an existing company. "Existing company" means a company formed and registered under the *Joint Stock Companies Act*, the *Companies Act*, 1862, or the *Companies (Consolidation) Act*, 1908, but does not include a company registered under those enactments in Northern Ireland or the Irish Free State.

§ 2. **General Considerations.** The administration of any company falling within these definitions is subject to:—

(1) Direct statutory regulation; and,

(2) So far as they are not excluded or modified by statute, the general legal and equitable principles considered in Parts I & II; and,

(3) The particular provisions of the constitution of the company contained in its memorandum and articles of association.

The policy of the law is to preserve to members of a company the right and opportunity to consider and to resolve upon matters touching the welfare and interests of the company. One of the means whereby the legislature has sought to give effect to this policy is to prescribe that members of a company be summoned to a general meeting from time to time whereat the affairs of the company may be discussed and its administration, if need be, subjected to criticism. This method of ensuring that the general body of members shall have an irreducible minimum of influence and control appears also in those provisions of the Act which lay down that certain matters, e.g. an increase in the authorised capital, can be accomplished only by a resolution of the company in general meeting; and the *Companies Act* goes so far as to

specify the mode in which certain matters may be resolved upon and by what majority, as, e.g., where it requires a special resolution of the company in general meeting to alter the articles of association (Section 9).

So far as there is no imperative statutory provision relating to the administration of a company, the position will be governed by the internal regulations of the memorandum and articles of association, which bind the company and the members as if those documents had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and the articles (Section 20). Although, however, the members of a company are thus regarded as having agreed to submit to the operation of the provisions of the company's constitution, those provisions must not be oppressively or unfairly employed (*Allen* v. *Gold Reefs of West Africa*, 1900, 1 Ch. 656). We have already seen (Chapter V, *supra*) that a breach of the internal regulations of a company may be restrained by injunction in appropriate circumstances. Even where there is no breach, but merely an abuse of powers created by the memorandum or articles, steps may be taken to redress any consequential injury to the company or to its members (*Alexander* v. *Automatic Telephone Co.*, 1900, 2 Ch. 56). The existence of a remedy in such cases depends upon the general principle of equity that powers must be exercised *bona fide* and with due regard to the interests of those for whose benefit the power was created, as e.g. a company and its members.

§ 3. **Articles of Association.** The memorandum and articles of association of a company must be registered with the registrar of companies upon its incorporation. The memorandum defines the essential characteristics of the company (Section 2) and determines its legal form and personality. The articles contain the internal regulations of the company and govern its domestic administration as well as the relation between the company and its members and between the members themselves. The articles will accordingly deal with, *inter alia*, the convention of meetings of shareholders, voting rights, proxies, polls and so on. Since the articles are registered as a public document, persons outside the company will be deemed to have notice of their provisions (*Mahoney* v. *East Holyford Co.*, 1875, L.R. 7 H.L. 869). Third parties will not, however, be deemed to have notice of whether or not the requirements of the articles have been duly observed by the company in connection with any given transaction, and are entitled, in the absence of any indication to the contrary, to assume that the company and its officers have acted in accordance with the

company's regulations (*Royal British Bank* v. *Turquand*, 1856, 6 E. & B. 27).

The members and the company are bound by the articles to the same extent as if they had been signed and sealed by each member and contained covenants on the part of each member to observe its provisions (Section 20).

Subject to the provisions of the *Companies Act* and to the conditions contained in the memorandum of association, a company may alter or add to its articles by special resolution (Section 10).

Specific articles actually registered in connection with the creation of a company are referred to as " special articles." It is not always essential that special articles be registered, for the First Schedule to the *Companies Act* contains a standard set of articles called Table A. This Table will apply to, and regulate the administration of, companies limited by shares and formed under the Act, except in so far as special articles registered in relation to any particular company exclude or modify the application of Table A. The regulations of Table A in relation to meetings of a company are so generally adopted with or without modification as to make familiarity with them essential.

Table C of the First Schedule contains a form of articles of association appropriate to a company limited by guarantee and not having a share capital.

Table D sets out articles of association applicable to a company limited by guarantee and having a share capital, while in Table E of the First Schedule are to be found articles of association which will serve for an unlimited company having a share capital.

The forms of articles contained in Tables C, D and E *must* be followed by the respective types of company as nearly as circumstances admit (Section 11). Table A, on the other hand, in relation to companies limited by shares may be adopted in whole or in part (Section 8), or may be entirely discarded in favour of special articles.

Companies registered without special articles between the 31st October, 1862, and the 1st October, 1906, are governed by the Table A set out in the First Schedule to the *Companies Act* of 1862; those registered between the 30th September, 1906, and the 1st April, 1909, by the Table A prescribed by the Board of Trade in 1906; and those registered between the 31st March, 1909, and the 1st November, 1929, by the Table A of the *Companies* (*Consolidation*) *Act*, 1908. The periods specified are exclusive of the terminal days. Companies not formed under the Act of 1929 may (subject to certain exceptions, including notably companies formed under the Acts of 1862 and 1908 respectively) register under the *Companies Act*, 1929 (Section 321). Where such registration takes place, the provisions of the

current Act will apply to the company save that, *inter alia*, Table A does not apply unless adopted by special resolution (Section 333 [3] [a]).

§ 4. **Membership of a Company.** The rights appertaining to membership of a company, including the right to attend its meetings, are normally exercisable exclusively by, or on behalf of, members of the company.

(1) Definition of Members.

Section 25 of the *Companies Act* enacts that the subscribers of the memorandum shall be deemed to have agreed to become members of the company, and on its registration shall be entered in its register of members. It is further provided that every other person who agrees to become a member of a company, and whose name is entered on its register of members, shall be a member of the company. The subscribers of the memorandum are deemed to become members immediately upon registration of the memorandum (*Tyddyn Sheffrey Slate Quarries Co.*, 1868, 20 L.T. 105).

In the case of persons other than the subscribers of the memorandum, the relationship of member and company is not perfectly constituted until the projected member's name is duly recorded in the register of members. Without registration, the rights of membership cannot be asserted. A company can be compelled, in proper cases, by application to the court, to enter on the register a person claiming to be a member of the company (*see below*).

(2) Register of Members.

Every company is required to keep, in one or more books, a register of its members. This register must contain entries of the following particulars:—

(a) The names and addresses, and the occupations, if any, of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its member, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) The date at which each person was entered in the register as a member;

(c) The date at which any person ceased to be a member.

Where a company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register must show the amount of stock held by each member instead of the amount of shares (Section 95).

The register may consist of more than one book so long as the different books are so connected by reference to each other as to provide the information required by the *Companies Act* (*Weikersheim's Case*, 8 Ch. App. 831). Allotment sheets may be treated as a register until formal books are prepared (*Ex parte Cammell*, 1894, 1 Ch. 528). Joint holders of shares may be entered on the register in such order as conforms with the articles of association. As a rule, such holders are entitled themselves to determine the order (*Re Saunders & Co.*, 1908, 1 Ch. 415); and they may then adopt one order in respect of some of the shares they hold, and a different order as to others (*Burna* v. *Siemens Bros.*, 1919, 1 Ch. 225).

By Section 102 the register of members is declared to be *prima facie* evidence of any matters directed or authorised to be inserted in it under the Act. The entry of a person's name on the register does not establish him conclusively as a member, and the absence of his name does not establish, beyond refutation, that he is not a member (*Re British Medical Association*, 39 C.D. 61); but the onus is upon those who challenge the accuracy of the register to prove the inaccuracy.

(3) Rectification of Register.

The register may be rectified upon application to the court. Power to decree rectification is conferred upon the court under Section 100 of the *Companies Act*, where:—

(a) The name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) Default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member.

Rectification of the register will not be ordered where the party or parties for whose benefit the application is made has or have not complied with the conditions of the articles of association, e.g. where a transfer which it is sought to compel the directors to register is not in due form (*Hart's Case*, 5 Eq. 195).

The court is competent to direct rectification in proper cases even after a winding-up has commenced (Section 203).

The secretary of a company has no power of his own volition to strike a name out of the register of members (*Wheatcroft's Case*, 29 L.T. 324).

(4) Notice of Trusts.

It is imperatively laid down that no notice of any trust, expressed, implied or constructive, shall be entered in the register, or be receivable

by the registrar, in the case of companies registered in England (Section 101). The effect of this provision is that so far as matters affecting the register of members are concerned, for example on the registration of a transfer of shares, a company is relieved from the consequences of notice that parties other than the transferor claim equitable interests in those shares which will be prejudiced by the transfer. Section 101 does not, however, absolve the company from the effect of notice of a trust except as regards dealings with the register. Thus in *Bradford Banking Co.* v. *Briggs*, 12 A.C. 29, shares were mortgaged with a bank, which gave notice to the company of its interest in the shares. The company subsequently sought to assert a lien over the shares in priority to the mortgage of the bank. It was held that the interest of the bank ranked first, as the company was not entitled to arrogate to itself an equitable interest in shares save subject to subsisting interests of whose existence the company was aware (*Rainford* v. *Keith and Blackman Co. Ltd.*, 1905, 2 Ch. 147 at p. 161).

A particular result of the fact that trusts are " kept off the register " is that voting rights will be determined upon the basis of the register of members, even though the beneficial interest in shares may be held by persons other than the registered proprietors.

(5) Share Warrants.

A public company limited by shares may, if so authorised by its articles, issue share warrants to bearer in respect of fully paid shares. Such warrants are transferable by delivery (*Companies Act*, Section 70) and are, therefore, by their nature incompatible with the registration of the name of the holder in the books of the company. Section 97 of the Act provides that on the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars:—

(a) The fact of the issue of the warrant;

(b) A statement of the shares included in the warrant, distinguishing each share by its number; and

(c) The date of the issue of the warrant.

The bearer of a share warrant is thus not strictly a member of the company in which the shares comprised in the warrant are held, for his name does not appear upon the register of members. As a warrant holder, he cannot claim to possess or to exercise the rights of a member; but it is enacted that the bearer of a share warrant may, if the articles so provide, be deemed to be a member of the company

within the meaning of the Act, either to the full extent or for any purpose defined in the articles (Section 97 [5]).

The bearer of a warrant may, subject again to the articles, be entitled to surrender it for cancellation and to have his name entered on the register of members (Section 97 [2]). He then becomes an actual member, with rights corresponding to his status as such.

(6) **Personation of Members.**

If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of the Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to such owner, as if the offender were the true and lawful owner, he shall be guilty of felony, and shall on conviction be liable, at the discretion of the court, to be sentenced to penal servitude for life or for any term not less than three years (Section 71). It may be observed that the mere impersonation of a shareholder at a meeting, not associated with an intent to obtain a share or warrant or money, is not an offence within the section.

§ 5. **Public and Private Companies.** A company falling within the *Companies Act* may be either a public or a private company. The distinction is an artificial one, although, as will be seen, it has an important practical foundation. Section 26 of the Act defines a private company as one which consists of not less than two members and which has by its articles:—

(a) Restricted the right to transfer its shares; and

(b) Limited the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be members of the company, and

(c) Prohibited any invitation to the public to subscribe for any shares or debentures of the company.

The expression "private company" is thus a term of art, and any company which does not satisfy the statutory definition is *ipso facto* a public company.

So long as a company contains within its articles the provisions required by Section 26, it will remain a private company even if those provisions are violated, as, for example, where the membership is allowed to expand beyond the prescribed limit. In such circumstances, however, the company will cease to be entitled to privileges

under the Act conferred upon private companies as opposed to public companies (Section 27 [1]). Where, on the other hand, a private company alters its articles so that they no longer contain the provisions made necessary by Section 26, it loses its character as a private company and must thereafter comply with the statutory regulations relevant to public companies.

It is not within the scope of this book to inquire into all the statutory divergencies in the treatment of private and public companies respectively, but the reasons for differentiation should be apparent. A considerable part of the law relating to companies is designed to protect the public from that prejudicial exploitation for which joint-stock enterprise has in the past been an efficient instrument in the hands of unscrupulous persons. The most superficial consideration suffices to demonstrate that a company which confines its contact with the public at large within the limits prescribed by Section 26 need not be subject to those requirements of the Act which are designed to protect the generality of persons from possible detriment in their connection with the company. A private company accordingly stands upon a special footing, and many of the provisions of the *Companies Act* which govern public companies either have no application to, or are relaxed in the case of, a private company.

§ 6. **Classification of Company Meetings.** It is proposed, for the time being, to omit from consideration meetings held in connection with the winding-up of a company and to deal only with such meetings as are held while a company is a going concern. For information as to meetings in liquidation proceedings reference should be made to Chapter XV. Meetings which must or may be held in relation to the administration of a company's affairs outside winding-up consist in:—

(i) General meetings of members, which include,
  (a) The statutory meeting,
  (b) Ordinary general meetings, and
  (c) Extraordinary general meetings;
(ii) Meetings of a class or classes of shareholders;
(iii) Directors' or Board meetings.

Each of these will be considered in detail.

CHAPTER X

MEETINGS OF SHAREHOLDERS

THE expression "general meeting" is not defined in the *Companies Acts*, but it is employed to describe any meeting which all those members of a company who have a right to vote are entitled to attend. It is thus opposed to a "class meeting" to which only the holders of a certain class or classes of shares are summoned.

§ 1. **Purpose and Powers of General Meetings.** Expediency compels the control and management of a company to be delegated to a board of directors, and so far as such delegation is given effect by the constitution of a company, its members cannot exercise any control over its affairs. Not even a resolution at a meeting can derogate from acts of the directors within the powers reposed in them (*Automatic Self-Cleaning Filter Syndicate Co.* v. *Cunninghi*, 1906, 2 Ch. 34; *Quin and Axtens* v. *Salmon*, 1909, A.C. 442). The only course is to remove the directors by appropriate resolution after, where necessary, altering the articles so as to make the power of removal available in the given circumstances (*Gramophone & Typewriter Co.* v. *Stanley*, 1908, 2 K.B. at p. 98). A complete vesting of control in the directors is, however, precluded by various provisions in the Act which require the transaction of certain matters to be effected by resolution of the company in general meeting. These matters include, *inter alia*, the following:—

(i) Change of name of the company (Section 19)
(ii) Alteration of objects (Section 5)
(iii) Alteration or reduction of capital (Sections 50 and 55)
(iv) Alteration of articles (Section 10)
(v) Issue of shares at a discount (Section 47)
(vi) Creation of a reserve liability (Section 49)
(vii) Approval of assignment of office by director (Section 151)
(viii) Instituting a voluntary winding-up (Section 225)
(ix) Registration under the *Companies Act*, 1929, of a company not formed under that Act (Section 321)
(x) Registration of an unlimited company as limited (Sections 16 and 321).

It is usual also for the articles of a company to reserve certain matters

for the decision of the company in general meeting. For example, under Article 69 of Table A, the amount for the time being remaining undischarged of moneys borrowed by the directors for the purposes of the company must not at any time exceed the issued share capital of the company without the sanction of the company in general meeting. In this connection it is important to bear in mind that the rights of third parties against a company are not necessarily affected by internal regulations which limit the authority of directors. If a transaction is within the powers of the company, it will be bound in relation to such a transaction even if the directors were not duly authorised to enter into it, provided that from an examination of the memorandum and articles the transaction would appear to have been within the competence of the directors (*Royal British Bank* v. *Turquand*, 1856, 6 E. & B. 327; *Kreditbank Cassel* v. *Schenker*, 1927, 1 K.B. 826).

It will be understood that such control as the members of a company may be able to exercise over the management of its affairs must be exerted at duly constituted meetings. Individual shareholders are not entitled to take legal action on behalf of the company (*Foss* v. *Harbottle*, 1843, 2 Hare 461). The proper course is to seek redress through the company and induce it to call the directors to account (*Orr* v. *Glasgow Rly. Co.*, 3 McQu. 799). The court will not generally interfere in the domestic administration of a company's affairs where the matter concerned is *intra vires* the company, but has been irregularly effected (*Foss* v. *Harbottle*, *supra*); for the majority could themselves regularise the position by appropriate action. So also, where by the articles the directors or alternatively a proportion of the shareholders are empowered to summon a meeting, the court will not order the directors to convene a meeting for the general purposes of the company (*MacDougall* v. *Gardiner*, 1875, 10 Ch. App. 606). The court will, however, intervene to prevent a majority from perpetrating a fraud upon a minority (*Menier* v. *Hooper's Telegraph Works*, 1874, 9 Ch. App. 350), or where the majority seeks to impose on the minority a resolution which exposes them to undue detriment and cannot be justified as being for the benefit of the company as a whole (*Brown* v. *British Abrasive Wheel Co.*, 1919, 1 Ch. 290). Where the circumstances are sufficiently strong to warrant such a course the court may, on an interlocutory motion, grant an injunction to restrain a company from holding a meeting (*Last* v. *Buller & Co.*, 1919, 36 T.L.R. 35). In *Jackson* v. *Munster Bank*, 1884, 13 L.R. In. 118, a circular was issued convening an extraordinary general meeting of the company at which resolutions were to be proposed altering the articles. The resolutions were manifestly objectionable from the point of view of the minority of

shareholders, who commenced an action to restrain the proposed resolution from being given effect. The court granted an injunction, pending the trial of the action, against proposing at the meeting the resolutions to which objection was raised.

The assent of every member of a company given individually is not equivalent to a resolution passed at a general meeting (*Re George Newman & Co.*, 1895, 1 Ch. 674). There are some cases, however, in which the will of the members need not be formally expressed at a duly convened meeting. A transaction *bona fide* entered into for the benefit of a company will be binding even though a resolution made necessary by its regulations is not passed, but the members unanimously agree by separate decisions and waive all formalities (*Parker & Cooper* v. *Reading*, 1926, 1 Ch. 975). " The court would never allow it to be said that there was an absence of resolution when *all* the shareholders, and not only a majority, have expressly assented to that which is being done " (*Baroness Wenlock* v. *River Dee Co.*, 1883, 36 Ch.D. at p. 681 per Cotton L.J.). Statutory instances exist also where the separate assents of shareholders will operate to bind the whole body, e.g., in connection with the acquisition of shares of shareholders dissenting from a scheme or contract approved by the majority under Section 155 of the *Companies Act*.

§ 2. The Statutory Meeting.

(1) Nature and Purpose.

Except in the case of a private company, every company limited by shares and every company limited by guarantee and having a share capital must, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company called " the statutory meeting " (Section 113 [1]).

The object of this meeting is to afford the shareholders an early opportunity of obtaining information as to the circumstances of the company's promotion and flotation and of considering its development since incorporation and also its immediate prospects. The date at which a public company is entitled to commence business is fixed by Section 94. In the case of a company having a share capital which has issued a prospectus inviting the public to subscribe for its shares, the relevant date is that at which a statutory declaration is filed in the prescribed form verifying that:—

(a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less than the minimum subscription; and

(b) Every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription (Section 94 [1]).

Where a public company having a share capital has not issued a prospectus, it becomes entitled to commence business when a statement in lieu of prospectus has been delivered to the registrar for registration, and a statutory declaration has been filed affirming that the directors have paid in respect of every share for which they are liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash (Section 94 [2]).

(The expression " month " as used in an Act of Parliament means calendar month [*Interpretation Act*, 1889, Section 3]. It may here be observed that Table A is an Act of Parliament, and is therefore subject to the *Interpretation Act*, 1889. Moreover, where a company is governed in part by special articles and in part by Table A the same rules of construction will be applicable to the special articles as to the clauses of Table A [*Fell* v. *Derby Leather Co.*, 1931, 2 Ch. 252]. It follows that the word " month " in special articles will normally be interpreted as meaning a calendar month.)

(2) Convention.

Subject to the holding of the statutory meeting within the interval prescribed by Section 113 (1), the meeting will be summoned in accordance with the provisions of the articles of association pertaining to the convention of general meetings of a company. It would appear, however, that the notice convening the statutory meeting must state that it is convened as such (*Gardner* v. *Iredale*, 1912, 1 Ch. 700) or the meeting will not satisfy the requirements of the Act. The requirements of a valid notice of a statutory meeting are otherwise identical with those relating to notices of any general meeting of a company, and are dealt with at large in Chapter XI.

(3) Statutory Report.

Section 113 (2) of the Act provides that the directors of a company must, at least seven days before the day on which the statutory meeting is to be held, forward a " statutory report " to every member of the company. The period of " at least seven days " is interpreted as meaning not less than seven clear days (*Railway Sleepers Supply Co.*, 1885, 29 Ch.D. 234). The purpose of this report is to acquaint the shareholders of the various facts which should be known to them, so as

to enable full advantage to be taken of the statutory meeting as an opportunity for discussion and ventilation.

By Section 113 (3), the report must be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and must state:—

(a) The total number of shares allotted, distinguishing shares allotted as fully paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) The total amount of cash received by the company in respect of the shares allotted, distinguished as aforesaid;

(c) An abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) The names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification. (Section 36 of the Act precludes a public company limited by shares or limited by guarantee and having a share capital from varying the terms of a contract referred to in the prospectus or statement in lieu of prospectus, previously to the statutory meeting except subject to its approval.)

Sub-section 4 provides that the report, so far as it relates to the shares allotted by the company, the cash received in respect of such shares, and the receipts and payments on capital account must be certified as correct by the auditors (if any) of the company.

The directors must cause a copy of the statutory report, duly certified, to be delivered to the registrar of companies for registration immediately after it is sent to members of the company (Section 113 [4]).

(4) Business.

The scope of the statutory meeting is defined by Sub-section 7 of Section 113, which enacts that the members of the company present at the meeting shall be at liberty to *discuss any matter relating to the formation of the company, or arising out of the statutory report*, whether

previous notice has been given or not, but *no resolution of which notice has not been given in accordance with the articles may be passed.*

This Sub-section is not restrictive and does not limit the scope of the meeting to the matters described by Sub-section 8. The meeting may adjourn from time to time, and at any adjourned meeting *any resolution of which notice has been given in accordance with the articles*, either before or subsequently to the former meeting, *may be passed*, and the adjourned meeting shall have the same powers as an original meeting. The words of the Sub-section in reference to adjournment of the meeting vest the power of adjournment in the meeting itself independently of the chairman's discretion or volition. The Common Law rule that only business unfinished at an original meeting can be transacted at an adjournment of it is expressly departed from. The directors are made responsible for the production, at the commencement of the meeting, of a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively. The list must remain open and accessible to any member of the company during the continuance of the meeting (Section 113 [6]).

(5) Default.

In the event of any default in complying with the provisions of Section 113, every director of the company who is guilty of, or who knowingly and wilfully authorises or permits, the default, shall be liable to a fine not exceeding £50 (Section 113 [9]). The court may direct, where any such penalty is imposed, that the whole or part of it shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered (Section 367).

Default in delivering the statutory report to the registrar or in holding the statutory meeting is a ground for petitioning for a winding up order against the company (Section 168 [2]). Only a shareholder is entitled to rely upon such default in presenting a petition (Section 170 [1] [b]), for creditors are not prejudiced by the failure to hold the meeting or to deliver the report. Moreover, a petition founded upon such default cannot be presented before the expiration of fourteen days after the last day on which the meeting ought to have been held (*ibid.*). On the hearing of the petition the court is given a discretion to direct, instead of making a winding-up order, that the report shall be delivered or that a meeting shall be held. The court is empowered also to order the costs incurred on the petition to be paid by any persons who, in the opinion of the court, are responsible for the default (Section 171 [2]). In circumstances which justify that course, a

winding-up order will, however, be made (*Re Kent Outcrop Coal Co.*, 1912, W.N. 26).

It may be noted here that where the regulations of Table A apply as to the convention and holding of meetings of a company, the statutory meeting is to be regarded as an extraordinary meeting for the purpose of determining the application of those regulations. This follows from Article 40 of Table A, which declares that all general meetings (other than the annual general meeting) shall be called extraordinary general meetings. It is doubtful whether the requirements of the *Companies Act* as to the holding of an annual general meeting do not permit of the statutory meeting being regarded also as the annual general for the first year of the existence of a company, and so serving a dual function (see § 3, *infra*).

Apart from the specific provisions which affect the constitution and function of the statutory meeting, it will be subject to the relevant principles and rules applicable to meetings generally.

§ 3. The Ordinary General Meeting.

(1) Statutory Provisions and General Function.

The statutory meeting represents the opportunity which a public limited company having a share capital must accord to its shareholders, soon after it becomes qualified to commence business, for discussion and, if need be, resolution in connection with the company's affairs. In the case of any company it is evident that members should be given a recurrent opportunity of meeting, firstly to consider the progress and development of the company, and secondly to take necessary action to safeguard their interests and to promote those of the company. Provision to this end may be, and usually is, to be found in articles of association; but in order to ensure that meetings of members will be convened at reasonable intervals irrespectively of any provision in the articles, the *Companies Act* imperatively requires that a general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting (Section 112 [1]). The meeting held to satisfy this provision is styled the "annual general meeting" or the "ordinary general meeting." The Sub-section cited contains two distinct requirements, namely (i) that a general meeting be held once in every calendar year, and (ii) that not more than fifteen months shall elapse between the holding of one general meeting and the next succeeding one. Thus if a company holds a general meeting in January of one year and no other such meeting until June of the following year, the first requirement is satisfied but not the second. Failure to comply

with either requirement constitutes an independent and separate default (*Smedley* v. *The Registrar of Companies*, 1919, 1 K.B. 97).

The calendar year begins on the 1st January and not on the anniversary of the date of incorporation of the company (*Gibson* v. *Barton*, 1875, L.R. 10 Q.B. 329; *Park* v. *Lawton*, 1911, 1 K.B. 588). It has already been observed that the statutory meeting probably cannot be regarded as an ordinary meeting for the purpose of Section 112, but it would seem that if an extraordinary general meeting (see § 4, *infra*) has been held, the Section will be complied with if the next general meeting is held within fifteen months of the extraordinary meeting and in the next calendar year (*Lord Claude Hamilton's Case*, L.R. 8 Ch. App. 548). No provision is made in the Act for the case in which a company is incorporated so near to the 31st December as to make it impracticable to hold a general meeting in the first year of its existence.

Article 39 of Table A incorporates within itself the provisions of Sub-section 1 of Section 112. The Article states that "a general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors."

The expression "ordinary general meeting" is derived from Article 40, which provides that "the above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings."

It is to be observed that while the manner in which the meeting is summoned and the time at which it is to be held, and so on, may be governed by the articles, the essential requirements of Section 112 (1) cannot be relaxed or modified by the internal regulations of the company.

By Section 112 (2), if default is made in holding a meeting in accordance with the provisions of the Section, the company and every director or manager of the company who is knowingly a party to the default shall be liable to a fine not exceeding £50.

Section 112 (3) empowers the court, in the event of such default, on the application of any member of the company, to call, or direct the calling of, a general meeting of the company.

This statutory power represents a modification of the principle

that the court will not interfere in matters relating to the internal administration of a company. On the other hand, it recognises the principle that where persons entrusted with the management of a company's affairs abuse their powers to the prejudice of shareholders, the court has jurisdiction to intervene (*Isle of Wight Rly. Co.* v. *Tahourdin*, 25 Ch.D. 320).

(2) Convention.

Within the statutory limits of time fixed by Section 112 (1), the annual general meeting is convened in accordance with the provisions of the articles of association. The requirements of Article 39 in this connection have already been noted, and the general considerations which govern the summoning and conduct of general meetings are dealt with in Chapter XI.

(3) Business.

The normal business of the annual general meeting is usually defined by the articles in terms similar to Article 44 of Table A, which states that all business shall be deemed special that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors. Article 42 requires that the notice of the meeting shall state the general nature of any special business. The combined effect of these provisions is that business, other than special business, may be transacted notwithstanding that previous notice of it has not been given, while special business cannot be dealt with unless the requisite notice has been given. In general, apart from specific regulation, no business whatsoever can be transacted without notice (*Rex* v. *Hill*, 1825, 4 B. & C. 444).

Section 123 (1) of the Act enacts that the directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account, or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account. The account must be made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months. In special circumstances the Board of Trade may, in its discretion, extend the periods of eighteen, nine and twelve months respectively in the case of any company.

These provisions are carried further by Section 123 (2), which requires the directors to cause a balance sheet to be made out in every calendar year, and to be laid before the company in general meeting. The balance sheet must be made out as at the date to which the profit and loss account, or the income and expenditure account as the case may be, is made up. There must be attached to the balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to any reserve fund. The maximum penalty for wilful default is six months' imprisonment or a fine not exceeding £200 (Section 123 [3]). The balance sheet must be signed on behalf of the board by two directors, or by the sole director if there is only one, and the auditors' report must be attached and read before the company in general meeting. The report must be open to inspection at the meeting by any member (Section 129 (1]). Any officer of the company who is knowingly a party to any default in this regard is liable to a fine not exceeding £50.

The almost universal and invariable practice is for the profit and loss account (or income and expenditure account) with the balance sheet and the report to be laid before the members at the ordinary (or annual) general meeting. This is not, however, essential, as the relevant provisions speak of "the company in general meeting" without specifying any particular general meeting. Accordingly an extraordinary general meeting would satisfy these provisions so long as the appropriate limitations of time are complied with. By Article 44, the consideration of the accounts, balance sheets and reports is deemed to be ordinary business if transacted at the ordinary general meeting, but if dealt with at an extraordinary general meeting is regarded as special business the general nature of which must be specified in the notice convening the meeting. Section 132 (1) of the Act provides that every company shall at each *annual general meeting* appoint an auditor or auditors to hold office until the next *annual general meeting*. The use of the italicised phrase is significant. By Sub-section 6 of the same Section, the remuneration of the auditors of a company is to be fixed by the company in general meeting. Table A makes these matters ordinary business at an ordinary general meeting (article 44).

(4) Annual Return.

Every company having a share capital must at least once in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return, or, in the case of the first

return, of the incorporation of the company (Section 108 [1]). "In every year" here means in every calendar year (*Gibson* v. *Barton*, *supra*; *Edmunds* v. *Foster*, 1875, 33 L.T. 690). The further contents of the return are defined in Sub-sections 2 and 3 of Section 108, and the form of the return is set out in the Sixth Schedule to the Act. The annual return must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the registrar of companies a copy signed by a director or by the manager or by the secretary of the company (Section 110 [1]). It will be noticed that the date to which the list of members must be made up is determined by reference to the date of the "first or only general meeting in the year" (Section 108 (1), *supra*). The time for delivering the return to the registrar is fixed in relation to the "first or only general meeting in the year" (Section 110 [1]). It is clear that the same meeting is intended for both purposes, and that it must be the ordinary general meeting held in compliance with Section 112.

§ 4. Extraordinary General Meetings.

(1) Voluntarily Convened.

A public limited company having a share capital is bound to convene a statutory meeting (Section 113) which is non-recurrent; and *every* company is bound to hold an annual general meeting (Section 112) which is regarded as an ordinary general meeting. Apart from these meetings demanded by statute, the law does not insist directly that a company should (outside winding-up proceedings) hold any other general meeting whatsoever. There are, however, various matters in relation to the administration of a company's affairs which can be transacted only by resolution of its members in general meeting. It is not always possible or expedient for consideration of such matters to wait until the next annual general meeting. The articles of association therefore make provision for the convention of general meetings other than the ordinary meeting. Such meetings are termed (see Article 40 of Table A) "extraordinary general meetings." As the conduct of a company's affairs reposes primarily in the hands of its directors, the power to convene an extraordinary general meeting is normally made exercisable by the directors in their discretion. It would be impolitic to allow shareholders a facile power to convene such a meeting at any time. Personal interests might induce different members at frequent intervals to convene meetings which, so far from serving the interests of the general body of shareholders or of the company, would impede its due administration and bring confusion to its affairs. On the other hand, if the constitution of a company is such that the entire control

of matters within the ambit of its power is vested in the directors, they are in a position to disregard the wishes of the shareholders in such matters and need not furnish the members with any opportunity of meeting apart from the annual general meeting (*Spurgin* v. *White*, 2 Giff. 473). If this position were not mitigated by some statutory provision whereby a sufficient proportion of the members of a company could effectively demand the convention of an extraordinary general meeting irrespective of any provision in the articles, the members might be exposed to serious prejudice by the conduct of directors and yet have no means of protecting their interests by meeting to ventilate their complaints and to check abuse of the powers of the board. Hence it is that the *Companies Act* permits shareholders to requisition an extraordinary general meeting whether or not the articles of a company make provison in that regard. Extraordinary general meetings on requisition are discussed below.

Indirectly, the directors of a company are constrained to convene an extraordinary general meeting where it is desired, without waiting for the ordinary general meeting, to give effect to such matters as require under the Act a resolution of the company in general meeting (see § 1, *supra*).

Article 41 of Table A provides that the directors may, whenever they think fit, convene an extraordinary general meeting, and that if at any time there are not within the United Kingdom sufficient directors capable of forming a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner, as nearly as possible, as that in which meetings may be convened by the directors.

By Section 115 (1) (c), *in so far as the articles of a company do not make other provision in that behalf*, two or more members holding not less than one-tenth of the issued share capital, or, if the company has not a share capital, not less than five per cent. in number of the members of the company, may call a meeting. This means of convening a meeting independently of the directors of a company may be displaced by the articles of association without any alternative method being substituted. While Table A does create an alternative procedure (article 41, *supra*), it is available only where there are not present within the United Kingdom sufficient directors to form a quorum, a state of affairs unlikely to arise and extremely difficult to establish as existing.

(2) Convened on requisition.

The statutory and inextinguishable power to which reference has been made, conferred upon a proportion of the members of a company

to requisition an extraordinary general meeting, is created by Section 114 of the Act. Sub-section 1 enacts that the directors of a company, *notwithstanding anything in its articles*, shall forthwith proceed duly to convene an extraordinary general meeting of the company on the requisition of members of the company holding, at the date of the deposit of the requisition, not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the date of the deposit a right to vote at general meetings of the company.

It should be noted that:—

(a) The right of requisition under this Section cannot be obliterated or attenuated by articles of association;

(b) If the articles permit a requisition to be made by a smaller number of members, the power so given, not being in conflict with the Act, will be additional to the statutory power;

(c) It is undecided whether, in calculating the appropriate proportion of members, shares on which the right to vote is temporarily in suspense (as where calls are in arrear and Table A applies) are to be reckoned;

(d) Capital carrying " the right of voting at general meetings " is confined to capital carrying a right to vote at *any* general meeting of the company, and not merely at meetings where a particular class of business is to be transacted.

The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists (Section 114 [2]). The Act does not specifically state that at a meeting convened on requisition the business stated must be restricted to the objects set out in the requisition under Sub-section 2, but probably the purpose of requiring those objects to be stated is to limit discussion to them. Where joint holders of shares are parties to the requisition, all of them must sign it, unless the articles authorise one (e.g. the first-named on the register of members) to sign on behalf of all the joint holders (*Re Patent Wood Keg Syndicate* v. *Pearse*, 1906, W.N. 164). Although the signatures of the requisitionists need not appear upon the same document, the various instruments which together constitute a valid requisition must be similar in form. They need not, however, be

identical, and it is sufficient if their general purport is the same (*Re Fruit & Vegetable Growers Association* v. *Kekewich*, 1912, 2 Ch. 52).

Section 114 (3) deals with the position where the directors fail to comply with the obligation imposed upon them by Sub-section 2. If the directors do not, within twenty-one days from the date of the deposit of the requisition, proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the date of deposit of the requisition. The directors will not be regarded as having proceeded " duly to convene a meeting " unless the notices sent out by their authority correspond with the objects of the requisition. If the meeting is called in respect of some but not all of those objects, it does not satisfy the requirements of the Section, and the requisitionists are entitled to convene their own meeting (*Isle of Wight Rly. Co.* v. *Tahourdin*, 1883, 25 Ch.D. 320). If the requisition contains certain matters which, though apparently irregular, may be lawfully carried out, the requisition is not vitiated and the directors are bound to observe it (*ibid.*). Moreover the meeting must be convened by notice given in accordance with the articles of the company or the Act. Article 42 of Table A requires that " subject to the provisions of Section 117 (2) of the Act relating to special resolutions (see p. 132, *infra*) seven days' notice *at the least* shall be given." No maximum period is fixed by this article, and it would appear that where it applies the directors might send out notices within the twenty-one days prescribed convening a meeting at (say) six months' notice. The object of the requisition to compel the holding of a meeting within a reasonable time would thus be defeated. It is probable, however, that where the holding of the meeting is unduly delayed by an inordinate length of notice, the directors would be deemed to have failed " forthwith duly to convene the meeting " demanded by the requisitionists. Only the directors are entitled, within the twenty-one days allowed them, to convene an extraordinary meeting. The requisitionists cannot do so, nor can the secretary of the company on his own initiative without the authority of the board (*Re State of Wyoming Syndicate*, 1901, 2 Ch. 431); but notices sent out by the secretary without authority may subsequently be ratified by the directors (*Hooper* v. *Kerr-Stuart & Co.*, 1900, 83 L.T. 729). It is not decided whether, after the expiration of the twenty-one days, the requisitionists can authorise the secretary to summon a meeting by notices signed by him. Section 114(4) states that a meeting convened under the Section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be

convened by directors. This would seem to permit the requisitionists to employ the secretary for the purpose of convention.

Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting must be repaid to the requisitionists by the company, and any sum so repaid is to be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default (Section 114 [5]). It is further provided that for the purposes of the Section, in the case where a resolution is to be proposed as a special resolution, the directors shall be deemed not to have duly convened the meeting if they do not give such notice as is required by Section 117 of the Act (Section 114 [6] and see 132, *infra*).

§ 5. **Class Meetings.** The articles of a company may provide that certain matters affecting the interests of the holders of a particular class of shares shall be subject to the consideration and decision of a meeting of those holders only. For example, Table A states that if at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of that class of shares (article 3).

Where such provision exists the articles will define also the constitution and mode of convention of the meetings concerned. The regulations of Table A relating to general meetings apply *mutatis mutandis* to every such separate meeting (article 3), but so that the necessary quorum shall be two persons at least, holding or representing by proxy one-third of the issued shares of the class, and so that any holder of shares of the class present in person or by proxy may demand a poll.

Apart from contrary regulations (such as those contained in Table A), a meeting of a class of shareholders may consist of one person if all the shares of the class are held by him (*East* v. *Bennett Bros. Ltd.*, 1911, 1 Ch. 163). It is not uncommon for the whole of a particular class of shares in one company to be held by another company. The holding company (whether it is a company within the meaning of the Act or not) may (if the shares it owns are held in a company within the meaning of the Act), by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company (Section 116 [1]).

Where the rights attaching to shares are defined by the articles and there are no restrictions on modification of those rights imposed by the terms of issue, the rights may be altered by special resolution. This will be so notwithstanding that the articles provide for alteration by a meeting of any class of shareholders (*Underwood* v. *London Music Hall*, 1901, 2 Ch. 309). In such a case, however, a modification effected by altering the articles will be regarded with suspicion, and may be restrained as unfair and oppressive unless it can be proved to be *bona fide*. In *Andrews* v. *Gas Meter Co.*, 1897, 1 Ch. 361, it was laid down that " the rights of the shareholders in respect of their shares and the terms on which additional capital may be raised are matters to be regulated by the articles of association . . . and are therefore matters which, unless provided for by the memorandum . . . may be determined by the company from time to time by special resolution."

If the rights attaching to shares are defined by the memorandum and no machinery is created by that instrument for the variation of those rights, recourse must be had to the procedure of Section 153 (*infra*) where it is desired to change them.

If, on the other hand, the constitution of a company makes the rights attaching to a class of shares variable by the holders of that class, Section 61 makes provision which is designed to prevent an abuse of the power of alteration. The Section applies where the share capital of a company is divided into different classes of shares, and provision is made by the memorandum or articles for authorising the variation of the rights attached to any particular class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares. It is enacted that if, in pursuance of such provision, the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 per cent. of the issued shares of that class, being persons who did not consent to, or vote in favour of the resolution for, the variation, may apply to the court to have the variation cancelled. Where such an application is made, the variation does not take effect unless and until it is confirmed by the court (Section 61 [1]).

By Sub-section 2, an application under the Section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

On any such application, the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied,

having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall, if not so satisfied, confirm the variation (Section 61 [3]).

The decision of the court is final and there is no right of appeal (Section 61 [4]).

The company is bound, within fifteen days after the making of an order by the court in this regard, to forward a copy of the order to the registrar of companies. If default is made in complying with this requirement, the company and every officer of the company who is in default is liable to a default fine (Section 61 [5]).

For the purposes of the Section, the expression " variation " includes abrogation (Sub-section 6).

The rights given by this Section to a dissentient minority do not appear of much practical value, except where the proportion of shares necessary to support an application to cancel a projected variation is concentrated in a small number of holders who are able to co-operate within the seven days allowed for formal objection. It will not be overlooked that Section 61 has no operation where rights attaching to shares are subjected to modification by a company in general meeting and not by the consent of the holders of the class concerned only.

The provisions of Section 153 of the Act are also germane to a consideration of class meetings. The Section is here reproduced in full:—

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or on the members or the class of members, as the case may be, and also on the company, or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under Sub-section (2) of this Section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with Sub-section (3) of this Section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) In this Section the expression " company " means any company liable to be wound up under this Act, and the expression " arrangement " includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

The following points are to be observed in relation to these provisions:—

(i) A dissentient minority is protected from prejudice or abuse of the rights created by the Section inasmuch as a compromise or arrangement, even when resolved upon, does not become binding until confirmed by the court. Dissentients may raise their objections on the application to the court for its confirmation, and if those objections are substantial the court may refuse to sanction the scheme unless it is modified so as to obliterate what is objectionable in it.

(ii) Holders of £1 shares fully paid may be regarded under the section as of a different class from holders of similar shares which are 10/- called and paid and 10/- paid up in advance of calls (*Re United Provident Co.*, 1910, 2 Ch. 477); but each class must be limited to such persons as have rights which are not so dissimilar as to make it impossible for them to consult together with a view to their common interest (*Sovereign Life Assurance Co.* v. *Dodd*, 1892, 2 Q.B. 573).

(iii) The requisite majority to approve a compromise or arrangement must comprise three-fourths in value of the members of the class present and voting in person or by proxy. It is not necessary that three-fourths in value of the whole class should approve.

(iv) For the purpose of these provisions there is a statutory right to vote by proxy (Sub-section 2).

(v) The meeting to be convened under Sub-section 1 in order to seek approval for a proposed compromise or arrangement must

be summoned " in such manner as the court directs." The court may give general or specific directions, and may waive non-compliance with the directions given by it as to the convention of the meeting (*Re Anglo-Spanish Refineries*, 1924, W.N. 222). If the notices do not inform shareholders of all the circumstances and facts which should be present to their minds in order to enable them to come to a proper decision as to the merits of the proposed scheme, the court will refuse its sanction (*Hughes* v. *Union Cold Storage Co.*, 1934, 78 Sol. J. 551).

(vi) The power of the court to sanction a scheme is discretionary. The court must be satisfied not only that the necessary majority has assented, but also that " the minority is not being overridden by a majority having interests of its own clashing with those of the minority whom they seek to coerce " (*Re Alabama, etc., Rly. Co.*, 1891, 1 Ch. 213; *Re English, Scottish and Australian Bank*, 1893, 3 Ch. 385). The scheme must be one which intelligent and honest members of the classes concerned, acting in their own interests, would approve (*Re Dorman Long & Co. Ltd.*, 1934, 1 Ch. 635).

(vii) The court has no power under Section 153 to sanction an arrangement between a company and its creditors (or shareholders) if the scheme involves a transaction which is *ultra vires* the company, as e.g. a sale or transfer of the entire undertaking of the company where no adequate power is contained in the memorandum of association (*In re Oceanic Steam Navigation Co. Ltd.*, 1938, 54 T.L.R. 1100). This principle is modified only as regards variation of the rights attaching to shares, where, notwithstanding the absence of any power in the memorandum to effect such variation, the court is competent to sanction a scheme altering the rights ataching to shares. Express provision for this purpose is made in Sub-section 5 of Section 153.

CHAPTER XI

CONSTITUTION OF SHAREHOLDERS' MEETINGS

THE general principles which regulate the convention of meetings of bodies whose members have a right to attend, and the rules which determine whether such meetings are validly constituted, have already been investigated (Chapter VI, *supra*). It is now necessary to consider those principles and rules in their particular application to meetings of shareholders in a company.

§ 1. **Notice.** Notice of all general meetings must be given to the members in accordance with the relevant provisions of the company's articles of association or of Table A, or, where there are no special articles applicable and the appropriate articles of Table A are expressly excluded, in conformity with the provisions of the *Companies Act*. Section 115 (1) enacts that the following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf (i.e. where there are no, or no operative, special articles and the Table A appropriate to the company has been excluded):—

(a) A meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;

(b) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force. It should be noted that this will not necessarily be the Table normally applicable to any given company which attracts to its constitution the Table A in force at the date of its registration (see p. 91).

The regulations of Table A are usually substituted for these statutory rules, and it is possible for specific articles of Association to prescribe such regulations as may seem expedient and proper. At Common Law no meeting could be validly held unless such notice was given as to afford every person entitled to attend a reasonable opportunity of being present (*Smyth* v. *Darley*, 1849, 2 H.L.C. 789; *Merchants of the Staple* v. *Bank of England*, 1888, 21 Q.B.D. 165). In the case of a

company, it would appear that whatever notice is fixed by the articles will suffice even though it may be inadequate in fact to provide a reasonable opportunity to members to attend. This follows from the principle that the articles constitute a contract between a company and its members, who are deemed accordingly to acquiesce in, and assent to, the regulations therein contained. This principle does not, however, permit *alteration* of the articles to the undue prejudice of existing shareholders, as, for example, by diminishing the length of notice as originally prescribed to an unreasonably short period of time; and an injunction may be obtained from the court restraining a company from giving effect to such an alteration (*Brown* v. *British Abrasive Wheel Co.*, 1919, 1 Ch. 290).

Under Article 42 of Table A, and subject to the provisions of Section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given), specifying the place, the day, and the hour of the meeting, shall be given to such persons as are, under the regulations of the company, entitled to receive such notice from the company; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice as those members may think fit.

The mode of giving notice, where Table A applies, is that prescribed by Articles 103 to 107 of that Table " or such other manner as may be prescribed by the company in general meeting " (article 42). The relevant articles are here reproduced.

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating the neighbourhood of the registered Office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings (see Chap. IX, § 4 as to the persons comprised in the term " member ").

Where Article 42 of Table A is applicable the mode of giving notice will depend primarily upon these regulations, but may be given in such other manner as may be prescribed by the company in general meeting.

A notice is for legal purposes, served upon a person if and when it reaches, or is deemed to reach, that person. As has been seen, if Table A is applicable, Article 103 fixes the time of service. In the absence of specific regulation, and where Table A does not apply, the position is governed by Section 26 of the *Interpretation Act*, 1889. It is there provided that " where an Act . . . authorises or requires any document to be served by post . . . then, unless the contrary intention appears the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Unless articles of association require it, notice of meetings need not be given to members of a company who have no address within the United Kingdom (*Re Union Hill Silver Co.*, 1870, 22 L.T. 400), or to the representatives of deceased shareholders if those representatives are not registered as holders in place of the deceased members

(*Allen* v. *Gold Reefs of West Africa*, 1900, 1 Ch. 656); but Article 107 of Table A (*supra*) requires such notice to be given. Apart from special provision, the holders of preference shares carrying no voting rights need not be summoned (*Re Mackenzie & Co., Ltd.*, 1916, 2 Ch. 450). Where dividends were payable on preferred ordinary shares at the rate of 10 per cent. in each year, out of the profits earned in that year only, it was held that dividends could not be regarded as in arrear for a year where no profits were earned. Accordingly holders had no right to be summoned where the articles provided that voting rights should attach to the shares only when dividends were in arrear for three months, although no dividends had been paid for a long period during which no profits had been earned (*Coulson* v. *Austin Motor Co.*, 43 T.L.R. 493).

Under Section 134 (3) of the *Companies Act*, the auditors of a company are entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company, and to make any statement or explanation they desire with respect to the accounts. It does not appear, however, that the auditors are entitled in their professional capacity to receive notices of meetings, and in practice auditors do not usually exercise their right to attend.

The registered address of a member will be the address appearing in the register of members which Section 95 requires every company to keep in one or more books at its registered office. Such book or books must contain *inter alia* entries showing the names and addresses and the occupations, if any, of the members. Until the register is duly made up, allotment sheets will satisfy the requirements of the Section (*Ex parte Cammell*, 1894, 1 Ch. 528).

The subscribers to the memorandum of association of a company are members even though they are not entered on the register (*Drummond's Case*, 1869, 4 Ch. 722), and they are accordingly entitled to be summoned to meetings unless (*semble*) the whole of the share capital is allotted to other persons (*Re London Coal Co.*, 1877, 5 Ch.D. 525). Until an allotment of shares takes place, the subscribers to the memorandum comprise all the members of a company and they may assemble as a meeting of the company. The provisions of Table A as to notice do not apply to such a meeting, and accordingly, in the absence of special articles, only reasonable notice need be given (*John Morley Building Co.* v. *Barras*, 1891, 2 Ch. 386).

It will be observed that under Article 42 seven *clear* days' notice is not required, the period being specifically stated to be inclusive of the day for which notice is given.

In the case of a meeting at which a special resolution is to be

proposed, not less than twenty-one days' notice must be given specifying the intention to propose the resolution as a special resolution. This is a statutory requirement (Section 117 [2]) and cannot be mitigated or relaxed by the articles of association. It is, however, provided that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given (*ibid.*). As the number of days' notice means, if not qualified, *clear days* (*Re Railway Sleepers Supply Co.*, 1885, 29 Ch.D. 234), the notice necessary for the passing of a special resolution is twenty-one clear days (*Re Hector Whaling Ltd.*, 1936, 1 Ch. 208) unless the formalities required by Section 117 are waived in the circumstances permitted by it.

Article 43 of Table A states that the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting. How far such provision will serve to save a meeting from being rendered nugatory where notice has not been given to all members entitled to attend is uncertain. Probably it will operate only in cases where the failure to give notice to one or more members is not attributable to any negligence or default on the part of the company or its officers, but results from pure inadvertence or error, e.g. where a letter is wrongly addressed by an employee, or, though correctly addressed, goes astray in the course of post. In any case, where all the members entitled so to do attend a meeting of which no notice or inadequate notice has been given, the irregularity may be waived and the proceedings at such a meeting will be valid and binding (*Re Express Engineering Works*, 1920, 1 Ch. 466).

Persons not entitled to vote at general meetings of a company (e.g. holders of preference shares carrying no voting rights) need not be given notice of meetings unless articles of association provide otherwise (*Re Mackenzie & Co. Ltd.*, 1916, 2 Ch. 450). Thus holders of share warrants not being members of the company (since their names do not appear upon the register of members) are *prima facie* not entitled to notices; but where (as is usual) they are given the right to vote in respect of the shares comprised in the warrants which they hold, notice must be given in such form as is appropriate. As share warrants are transferable by delivery so that the holder at any particular time may not be known to the company, notice must be given by advertisement (see e.g. Article 104 of Table A, *supra*). It is not incumbent upon the company to establish that the advertisement actually came to the notice of the persons for whom it was published at the time it was published (*Sneath* v. *Valley Gold Co.*, 1893, 1 Ch. 477).

The presence at a meeting of persons not entitled to be present or to vote thereat does not invalidate the meeting provided they take no part in the proceedings (*Quinn* v. *National Society's Arbitration*, 1921, 2 Ch. at p. 323).

As an adjourned meeting is merely a continuation of the original meeting, notice of the adjourned meeting need not be given unless special regulations require otherwise (*Scadding* v. *Lorant*, 1851, 3 H.L.C. 418); but the necessary formalities must have been complied with in relation to the original meeting if the adjournment is to be valid. Under Article 49 of Table A it is provided that " when a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting " ; but where the adjournment is for a shorter period " it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting." Section 119 of the Act provides that where a resolution is passed at an adjourned meeting of a company, the resolution shall for all purposes be treated as having been passed on the day on which it was in fact passed. It follows that if the articles require notice to be given so many days before certain business, e.g. the election of a director, can be effected it will suffice if the prescribed period has elapsed between the date of giving notice and the actual date when the resolution is passed at an adjourned meeting although the interval between the notice and the date of original meeting was inadequate (*Smith* v. *Paringa Mines*, 1906, 2 Ch. 261).

Notice must be absolute and not contingent or conditional, i.e. it must not make the holding of the meeting dependent upon the happening of some uncertain event or the fulfilment of some undetermined condition (*Alexander* v. *Simpson*, 43 C.D. 139) unless the articles expressly sanction such a notice (*North of England Steamship Co.*, 1905, 2 Ch. 15). A notice may, however, validly state that certain business will be considered only in certain events so long as the terms of the notice are unequivocal as to the actual holding of the meeting itself (see *Espuela Land Co.*, 1900, W.N. 139).

§ 2. **Nature and Contents of Notices.** The general principle that the terms of a notice must be sufficiently explicit and comprehensive to inform the persons summoned to a meeting of the purposes of the meeting and the business which is to be transacted, applies to meetings of the members of a company and also to meetings of its creditors where such meetings are held in connection with the company's affairs. A notice must give " a fair, candid and reasonable explanation " of the business to be brought forward at the meeting (*Kaye* v. *Croydon Tramways*, 1898, 1 Ch. 358). If a meeting is called

to consider a resolution in relation to some particular statutory proceeding, e.g. a compromise or arrangement under Section 153, this must be clearly stated in the notice (*Re Stearic Acid Co.*, 11 W.R. 980).

It will be sufficient, however, if the notice makes reasonably plain what is to be done without specifically indicating the Section of the Act under which it is to effected. In *Imperial Bank of China* v. *Bank of Hindustan*, 1868, 6 Eq. 91, a notice was held to be deficient which stated that an agreement for amalgamation would be submitted for approval, without indicating that the amalgamation proposed was to be conducted under Section 161 of the *Companies Act*, 1862 (now Section 234 of the 1929 Act). There is authority, however, to support the view that the notice would have been valid if it had stated that the amalgamation was to be carried out " under the Act " (Buckley, *Law and Practice under the Companies Acts*, 11th Edition at p. 274). Not only must the contents of the notice anticipate the nature of the proceedings, but the business actually transacted must substantially correspond to what was notified. Thus where a notice stated that two resolutions were to be proposed, one to wind up for the purpose of reconstruction and a second for sanction to a reconstruction scheme, and only the resolution to wind up was put, it was held that the passing of that resolution was ineffectual, as it resulted in a position fundamentally different from that contemplated by the notice (*Teede and Bishop*, 1901, 70 L.J.Ch. 409).

If a notice properly specifies only part of the business it is proposed to transact, that which has been properly notified is within the competence of the meeting (*Re British Sugar Refining Co.*, 1857, 3 K. & J. 408). So also amendments which are relevant to, and arise fairly out of, a proposed resolution may be dealt with notwithstanding that notice of the amendment has not been given (*Re Trench Tubeless Tyre Co.*, 1900, 1 Ch. 408; but see as to amendments generally p. 73). Where a notice stated that a resolution was to be passed " with such amendments and alterations as shall be determined at the meeting," it was held that a resolution which was passed in a form substantially different from that stated in the notice was valid (*Betts & Co., Ltd.* v. *Macnaghten*, 1910, 1 Ch. 430). In this case, the notice stated that three named directors were to offer themselves for re-election at the meeting, but other persons not mentioned in the notice were in fact appointed, and their appointment held to be good.

The decisions in these and other cases establish that a notice is not to be construed with excessive strictness. It will be regarded as valid so long as it complies with the Act and the articles and substantially conveys without ambiguity or equivocation the character of the business to be transacted (*Wright's Case*, 1871, 12 Eq. 335n.); but there must

be an adequate disclosure of all material facts relevant to the question in regard to which members will be called upon to vote (*Baillie* v. *Oriental Telephone & Electric Co. Ltd.*, 1915, 1 Ch. 503). This is essential if those receiving the notice are to be in a position to decide from it whether or not the protection of their interests in the company demands that they should attend the meeting (*Hughes* v. *Union Cold Storage Co.*, 1934, 78 Sol. J. 551). Whether a notice is adequate or not must be determined in relation to the particular facts of each case (*Normandy* v. *Ind, Coope & Co.*, 1908, 1 Ch. 84). Where a notice failed to disclose the pecuniary interest of directors in a proposed reconstruction, the notice was held to be bad (*Kaye* v. *Croydon Tramways*, 1898, 1 Ch. 358); and so also where the interest was not disclosed with sufficient particularity (*Hutton* v. *West Cork Rly. Co.*, 1883, 23 Ch. D. 654; *Normandy* v. *Ind, Coope & Co.* v. *supra*); on the other hand, a resolution increasing the fees payable to directors was regarded as valid where the notice specified a greater increase than that actually resolved upon (*Torbock* v. *Lord Westbury*, 1902, 2 Ch. 871); and a notice stating that a meeting would be asked to ratify certain acts which were *ultra vires* the directors was held effective although it omitted to say why such ratification was sought (*Grant* v. *United Kingdom Switchback Rly. Co.*, 1889, 40 Ch. D. 135).

Apart from these general considerations defining the general tenor of a notice, its contents must comply with any apt regulations in the articles of association. Thus Article 42 of Table A requires that notices of meetings shall, in the case of special business, specify the general nature of that business. By Article 44 of the same Table special business comprises:—

(a) All business transacted at an extraordinary meeting; and,
(b) All business transacted at an ordinary meeting other than:—
  (i) Sanctioning a dividend;
  (ii) Consideration of the accounts, balance sheets and the ordinary report of the directors and auditors;
  (iii) The election of directors and other officers in place of those retiring by rotation; and,
  (iv) The fixing of the remuneration of the auditors.

It is a question of construction as to whether a notice adequately indicates the general nature of the business to be brought before a meeting. The ultimate decision of such a question must rest upon the judicial view which is taken of any given case. Thus it has been held that a statement that certain business would be dealt with made in a director's report accompanying a formal notice of a meeting was a valid notification (*Boschoek Proprietary Co.* v. *Fuke*, 1906, 1

Ch. 148), at any rate where the accompanying document was referred to in the notice.

The notice convening the statutory meeting of a company must state that it is the statutory meeting (*Gardner* v. *Iredale*, 1912, 1 Ch. 700). At that meeting the members present are at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report (see p. 100, *supra*), whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed (Section 113 [7]). The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting (Section 113 [8]).

§ 3. **The Convening Authority.** A valid and effective notice of a meeting can be given only by the person or persons entitled to summon it (*Re State of Wyoming Syndicate*, 1901, 2 Ch. 431). The power to convene a meeting of a company is, in normal circumstances, vested in the board of directors, and notices must accordingly be sent out under and with their authority. This authority is exercised through the medium of the secretary, and is derived from the directors acting collectively as a board. The consents of directors given independently of each other do not constitute a valid authorisation (*Re Haycroft Gold Reduction Co.*, 1900, 2 Ch. 230); and where the authority to summon a meeting of members purports to emanate from a board meeting which was irregularly constituted, the meeting so summoned will be itself irregular and its proceedings ineffectual. The defect in the constitution of the convening authority must, however, be raised immediately it becomes apparent. Delay is tantamount to condonation and will prevent the validity of the meeting which is convened from being effectively challenged (*Browne* v. *La Trinidad*, 1887, 37 Ch.D. 1). Thus where notices convening a meeting of shareholders at which a resolution to wind up was passed had been issued under the authority of a resolution of the board at which a quorum was not present, the court refused to declare the resolution and the meeting invalid on the application of shareholders six months after the resolution had been passed (*Southern Counties Deposit Bank* v. *Rider & Kirkwood*, 1895, 73 L.T. 374). A notice issued without the requisite authority may, however, be rendered valid and effectual by subsequent ratification (*Hooper* v. *Kerr Stuart & Co.*, 1900, 83, L. 7, 729).

Under Table A, the annual general meeting of a company must be

held at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors (Article 39).

The directors are given power to convene an extraordinary general meeting whenever they think fit (Article 41). It is further provided that if at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors (*ibid.*). In the fixing of a time and place for a meeting, where these matters are within their discretion, the directors must act *bona fide* (*Cannon* v. *Trask*, 1875, L.R. 20 Eq. 669). The same article incorporates by adoption the imperative provisions of Section 114 of the Act as to the convention of an extraordinary general meeitng on requisition (see Chapter X, *supra*).

If no other provision in regard to the convention of meetings is made by the articles (i.e. by special articles or by the application of Table A), two or more members holding not less than one-tenth of the issued share capital, or, if the company has not a share capital, not less than 5 per cent. in number of the members of the company, may call a meeting (Section 115 [1] [c]).

A notice emanating from an authorised source should bear the stamp of authenticity. By Section 33 of the Act a document requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal. The expression document includes a notice (Section 380). Section 93 requires all notices of a company to bear its name in legible characters.

The *Companies Act* also empowers the court to convene a meeting of a company in certain circumstances and for specific purposes. Thus Section 115 (2) enacts that if, for any reason, it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the articles or the Act, the court may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled

to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit. Where any such order is made the court may give such ancillary or consequential directions as it thinks expedient. A meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted (*ibid.*).

If, for example, it is impracticable to procure the attendance at a meeting of a sufficient number of members to constitute a quorum as fixed by the articles, the court may direct a meeting to be held at which fewer members will suffice to provide a quorum. At such a meeting an effective resolution may be passed altering the articles of association so as to reduce the quorum for subsequent meetings to a number more consistent with existing circumstances. The meeting convened by the court will thus enable the difficulty in procuring a duly constituted meeting to be removed for the future.

In the case of a proposed compromise or arrangement under Section 153 of the Act, the court is empowered, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, to order a meeting to be summoned, in such manner as the court directs, of the class or classes of persons concerned in the projected compromise. (See Chapter X, *supra.*)

In these provisions "the court" means the court having jurisdiction to wind up the company concerned (Section 380 [1] *and see* p. 175).

§ 4. **Effect of Irregularity.** If the notice convening a meeting is defective in that either:—

(i) It is not sent to a person entitled to receive it, and there is no saving provision in the articles, or

(ii) It is sent without due authorisation and is not subsequently ratified, or

(iii) It does not sufficiently indicate the business to be transacted, the proceedings founded upon the notice will be rendered abortive, in the first two cases in their entirety and in the last case as regards the business that was not duly notified (*Woolf* v. *East Nigel Gold Mining Co., Ltd.*, 1905, 21 T.L.R. 660).

As has been seen, however, if all the members entitled to attend are in fact present at a meeting of which no, or no sufficient, notice has been given, they may waive the irregularity, and resolutions passed by them will be effective (*Re Express Engineering Works Ltd.*, 1920, 1 Ch. 466 at p. 470).

Even where *all* the members do not attend, a member who is present

at a meeting not properly constituted and who takes no step within a reasonable time to impeach the proceedings, but stands by while the matters determined at the meeting are acted upon, is precluded from setting up the irregularity (*Re British Sugar Refining Co.*, 1857, 3 K. & J. 408).

It is to be observed also that where a transaction is *intra vires* a company and is *bona fide* agreed upon with the unanimous consent of all the members, it will be valid and effectual even though no meeting is held and the assents of members are separately expressed and at different times (*Parker & Cooper Ltd.* v. *Reading*, 1926, 1 Ch. 975).

A notice cannot be validated where the object of the meeting is *ultra vires* (*Re Vale of Neath & South Wales Brewery*, 1852, 1 De G. M. & G. 421).

If the articles provide that the place of a meeting shall be "as determined by the directors," the court will not restrain the holding of a meeting at a place different from that at which all previous meetings have been held, unless the choice of venue is dictated by some fraudulent or oblique motive (*Martin* v. *Walker*, 1918, 145, L.T. Ju. 377). The court will for example intervene where a place or time is fixed by the directors with the object and for the purpose of preventing shareholders from exercising their voting powers (*Cannon* v. *Trask*, 1875, L.R. 20 Eq. 669).

So also of the notice if a meeting is misleading, the court will grant an injunction against it being held (*Jackson* v. *Munster Bank*, 1884, 13 L.R. Ir. 118).

§ 5. **Chairman.** The articles of a company will determine how the chairman of a meeting of members is to be appointed. In the absence of any provision, or where the appointed chairman refuses to act or is incapable of acting, a meeting may elect its own chairman.

Table A provides, in the articles indicated, that by:—

Art. 47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

Art 48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of the number to be chairman.

Where the relevant provisions of Table A are excluded and there are no specific regulations to determine the appointment of a chairman, Section 115 (1) (e) of the *Companies Act* will govern the matter. By that enactment any member elected by the members present at a meeting may be the chairman thereof.

The general functions and powers of the chairman at a meeting of members of a company correspond to those attributable to the chairman at meetings of any assembling body (see Part II, Chap. V).

§ 6. **Agenda.** The agenda of a meeting of members will depend upon the nature of the meeting (i.e. whether it is the statutory meeting or the annual general meeting and so on) and upon the particular business to be transacted.

§ 7. **Quorum.** Section 115 (1) (d) of the *Companies Act* provides that in so far as the articles of a company do not make other provision in that behalf, two members in the case of a private company, and three members in the case of any other company, personally present shall form a quorum. This provision governs meetings of a chass of shareholders as well as general meetings.

The articles do, however, invariably make provision in this behalf either by special regulations or by the express or tacit adoption of Table A.

(a) GENERAL MEETINGS. By article 45 of the Table, it is provided that " No business shall be transacted at any general meeting unless a quorum of its members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum."

The position which arises where a quorum does not appear at a meeting is provided for by Article 46, which states that " if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, is dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum."

Even where this regulation operates, one member cannot constitute a quorum at a general meeting where he alone attends on the adjournment (*Re Sanitary Carbon Co.*, 1877, W.N. 223).

The holder of a proxy is to be reckoned in computing a quorum where the articles require a specified number of members to be present " in person or by proxy " for the constitution of a valid meeting; but the same person cannot be counted both as a member in his own right and also as the donee of a proxy from another member (*Ernest* v. *Loma Gold Mines*, 1897, 1 Ch. 1).

Attendance by proxy is possible only in pursuance of power to that effect in the articles of the company, there being no right at Common Law to vote by proxy (*Harben* v. *Phillips*, 1883, 23 Ch.D. 14 at p. 35). It will be noted that although Table A confers a right to vote by proxy (Article 58), a quorum under Article 45 comprises only "members personally present."

Section 116 of the *Companies Act*, empowers any corporation which is itself a member of a company within the meaning of the Act (*vide* p. 180) to authorise by resolution of its directors or other governing body, such person as it thinks fit to act as its representative at any meeting of the company, or of any class of members of the company, and, if a creditor, at any meeting of any creditors of the company. A person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member or creditor of the other company. *Inter alia*, such a representative must be counted in determining whether a quorum is present (*Re Kelantan Coco Nut Estates*, 1920, 64, Sol. J. 700).

Where a meeting is convened by the court under Section 115 (2) of the *Companies Act*, the constitution of the meeting will be governed by such directions as the court thinks fit to make, and the provisions of the articles become inoperative, so far as that meeting is concerned, save to the extent to which the court's order adopts them.

(b) CLASS MEETINGS. The provisions of Section 115 (1) (d) (*supra*) as to a quorum would appear to apply to meetings of a class of members as well as to general meetings. It will, however, be remembered that the rules prescribed by Section 115 (1) are operative only where, in the matters with which the Section deals, the articles of association are entirely negative. Where Table A applies, its provisions as to general meetings are made applicable *mutatis mutandis* to meetings of any class of shareholders by Article 3, but a quorum is fixed for such meetings at two persons at least holding or representing by proxy one-third of the issued shares of the class.

It may be observed also that where all the shares of a particular class are held by one person, that person alone may constitute a quorum at a meeting of shareholders of that class (*East* v. *Bennett Bros. Ltd.*, 1911, 1 Ch. 163).

(c) MEETINGS UNDER SECTION 153. In the case of meetings directed by the court to be convened in connection with a projected compromise or arrangement under Section 153, the quorum at a meeting of the company, or of a class of shareholders in the company, will depend upon the court's direction.

CHAPTER XII

BUSINESS OF COMPANY MEETINGS

THE business of a meeting of a company is effected by one or other of three forms of resolution, (a) ordinary, (b) extraordinary and (c) special. Each of these has its particular aptness for certain kinds of business. In some cases the Act prescribes the form of resolution which must be employed in relation to specific matters; where the Act does not define the kind of resolution necessary, the articles may decree its form. If neither the Act nor the articles demand a different form of resolution, an ordinary resolution will suffice.

§ 1. **Resolutions of General Meetings.** Each form of resolution is considered below:—

(a) **Ordinary Resolution.**

This is a resolution passed by a simple majority of those present in person or by proxy where proxies are allowed and voting upon the resolution. It is the form of resolution familiar to the Common Law, and is not defined in the *Companies Act*. In the absence of contrary provision in the articles an ordinary resolution is effective for, *inter alia*, any of the following matters:—

(i) To authorise an issue of shares at a discount (Section 47);
(ii) To increase the share capital if authorised by the articles, or otherwise to alter the share capital apart from a reduction of the subscribed capital (Section 50, and Table A, Article 37).
(iii) To appoint an auditor (Section 132);
(iv) To appoint directors;
(v) To declare dividends;
(vi) To approve the accounts;
(vii) To wind up voluntarily where provision to that effect is made by the articles (Section 225),

and generally to do all things for which an extraordinary or a special resolution is not specifically required. Notice of an ordinary resolution must be given in accordance with the articles of association. Table A requires seven days (Article 42). In the case of the appointment of an

auditor, other than a retiring auditor, at an annual general meeting, notice of the intention to nominate a particular person to the office must be given by a member to the company not less than fourteen days before the annual general meeting. The company must send a copy of any such notice to the retiring auditor, and must also notify the members either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting (Section 132 [2]). There is a proviso to the effect that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, although not given within the time required, shall be deemed to have been properly given; and the notice of the nomination, instead of being sent by the company within the period specified above, may be sent at the same time as the notice of the annual general meeting (*ibid.*).

(b) Extraordinary Resolution.

This is an artificial statutory form of resolution requiring a larger majority than an ordinary resolution. By Section 117 (1), a resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person, or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. The majority of three-fourths requires that not less than *three-fourths of those who vote upon the resolution* must support it. It is not necessary that the *difference* between the votes respectively for and against the resolution should represent three-fourths of the votes cast upon it. Notice of the resolution is duly "given" when it is sent and served as required by the articles, or where no provision is made by them, in accordance with Section 115 of the Act (see p. 135). The notice must not merely state that it is intended to propose a resolution as an extraordinary resolution. The resolution itself must be substantially set out in the notice (*McConnell* v. *Prill & Co.*, 1916, 2 Ch. 57). This would seem to preclude the passing of the proposed resolution in a form so amended as to be materially different from that recorded in the notice; though if the amended resolution is clearly more favourable to the company and to the members it would appear that no objection could be effectively taken on the ground that the resolution as passed is not absolutely reconcilable with the notice given (*Torbock* v. *Lord Westbury*, 1902, 2 Ch. 871). In any case, if all the persons entitled to attend and vote so agree, the formality of notice may be dispensed with.

An extraordinary resolution is demanded by the *Companies Act* in connection with the following:—

(i) To initiate a voluntary winding-up on the ground that the company cannot carry on business by reason of its liabilities, so that it is advisable to wind up (Section 225).

(ii) To authorise the liquidator in a members' voluntary winding-up to compromise with creditors and contributories respectively, claims debts or calls (Sections 191 and 248).

(iii) To effect an arrangement between the general body of creditors and a company about to be, or in the course of being, wound up voluntarily (Section 251).

(iv) To give directions as to the disposal of the books of a company and of its liquidator in a members' voluntary winding-up (Section 283).

An extraordinary resolution must be employed also wherever the articles demand it, except, of course, where the Act requires a special resolution, when no alternative form will be effectual.

It may here be emphasised that the expression "extraordinary" when used in relation to resolutions bears no relation to the sense in which the same word is applied to general meetings of a company. A resolution is extraordinary by reason of its being passed in the manner prescribed by Section 117(1). A meeting is extraordinary simply because it is not the ordinary (or annual general) meeting of a company.

It follows that subject to compliance with the formal requirements of the Act and the articles of association, an extraordinary resolution may be effectively passed at an ordinary meeting while, conversely, an ordinary resolution may be duly resolved upon at an extraordinary meeting.

(c) Special Resolution.

This form of resolution is again an artificial conception of the *Companies Acts*, and is subject to formalities more stringent than those affecting an extraordinary resolution. A special resolution is one which has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given (Section 117 [2]). It will be seen that the distinction between an extraordinary and a special resolution lies in the fact that the former may be passed upon such notice as the articles may require, while a statutory minimum of notice is prescribed in relation to the latter. By the proviso to

Section 117 (2) it is enacted that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given. There may be an effective waiver as to the length of notice necessary, notwithstanding that all those entitled to attend do not in fact attend, so long as they acquiesce in dispensing with the notice; and, moreover, the assents of persons entitled to attend a meeting but having no power to vote thereat, will not be required to make a waiver valid.

The observations made in relation to extraordinary resolutions as to the substance of the resolution appearing in the notice thereof, and as to amendment, apply with equal force to special resolutions (see p. 131). Where the proposed resolution has reference to some particular proceeding under the Act, this must be indicated in the notice (*Re Stearic Acid Co.*, 11 W.R. 980).

A special resolution is necessary wherever required by the articles of a company. It is made imperative by the *Companies Act* for a variety of matters, of which the following list is representative but not exhaustive:—

(i) To alter the objects of a company (Section 5);
(ii) To alter the articles (Section 10);
(iii) To change the name of a company (Section 19);
(iv) To create a reserve liability (Section 49);
(v) To authorise the payment of interest on shares out of capital where such authority is not given by the articles (Section 54);
(vi) To reduce the share capital of a limited company (Section 55);
(vii) To appoint inspectors to investigate the affairs of a company (Section 137);
(viii) To make unlimited the liability of directors or managers of a limited company (Section 147);
(ix) To authorise an assignment of office by a director (Section 151);
(x) To resolve that a company be wound up by order of the court (Section 168);
(xi) To institute a voluntary winding-up where neither an ordinary nor an extraordinary resolution is appropriate (Section 225);
(xii) To authorise the liquidator of a company being or about to be wound-up voluntarily to sell its assets in consideration of shares in another company (Section 234).

The declaration of the chairman at any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, that the resolution is carried, shall, unless a poll is demanded, be con-

clusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution (Section 117 [3]). It follows that once the opportunity for demanding a poll has passed, an extraordinary or special resolution which has been declared carried cannot be challenged on the formal ground that the requisite majority did not vote in favour of it (*Re Graham's Morocco Co.*, 1932, S.C. 269); but objection could be taken on some substantial ground, e.g., that the resolution was *ultra vires* the company or was in fraud of a minority (see § 5). The chairman's declaration may also be disputed where it is bad on the face of it, e.g., where he announces that sixty votes have been cast in favour of a special resolution and forty against it, and that the resolution is accordingly carried (*Re Caratal (New) Mines Ltd.*, 1902, 2 Ch. 498).

§ 2. **Miscellaneous Resolutions.** There exist certain special proceedings under the *Companies Act* which involve the passing of a resolution in a form peculiar to those proceedings, and either by the company in general meeting or by a class of members.

Two instances of such resolutions need be noticed here:—

(1) Where a company which has been registered under the *Companies Act* as an unlimited company desires to be registered as limited, a resolution to that effect must be passed by a majority of not less than three-fourths of the members present in person or by proxy (where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose (Sections 16 and 321 [1] (b) [v] and [vi]).

The notice summoning a meeting in this connection must clearly state the object of the resolution and the proceeding contemplated (*Re Stearic Acid Co.*, 11 W.R. 980).

The requisite majority is three-fourths of the members present, and not merely (as in the case of an extraordinary or special resolution) three-fourths of those present and voting.

(2) Where a compromise or arrangement is proposed between a company and its members or any class of them, a majority in number, representing three-fourths in value of the members or class of members, present either in person or by proxy at a meeting convened for the purpose, must agree to the compromise or arrangement contemplated (Section 153 [2]).

Here again the notice convening the meeting must be sufficiently specific (*Hughes* v. *Union Cold Storage Co.*, 1934, 78 Sol. J. 551). The meeting must be summoned in such manner as the court directs. Failure to comply with the directions of the court is not, however, fatal to the validity of the meeting or meetings involved in the com-

promise; the court may waive compliance so that disregard of the formalities prescribed by the order of the court will not affect the proceedings (*Re Anglo-Spanish Refineries*, 1924, W.N. 222).

§ 3. **Amendment.** Where an ordinary resolution of which proper notice has been given is put to a meeting of members of a company, any relevant amendment may be proposed, although it has not been notified in the same way as the original resolution, provided such amendment comes within the scope of the notice of the meeting. Thus, where a notice stated that a resolution to re-elect three directors was to be passed " with such amendments as should be determined," it was held that an amendment to elect two extra directors was permissible (*Betts* v. *Macnaghten*, 1910, 1 Ch. 430); and where the notice specified, as part of the business to be transacted, the notification of a particular contract, an amendment approving the agreement subject to modifications not casting additional burdens on the company would be valid (*Wright's Case*, 12 Eq. 335, 341).

In the case of extraordinary and special resolutions it would seem that no substantial variation of the resolution as set out in the notice is within the competence of a meeting (*MacConnell* v. *E. Prill & Co.*, 1916, 2 Ch. 57). This limitation upon the power of a meeting to amend such resolutions is a consequence of the statutory definitions of an extraordinary and a special resolution respectively, namely, " a resolution . . . passed . . . at a general meeting of which notice specifying the intention to propose *the resolution* " as an extraordinary or special resolution, as the case may be, has been duly given.

It should not be overlooked, however, that since notice of an extraordinary or special resolution may be waived by the concurrence of all the members entitled to attend and vote, a substantial amendment to such a resolution may be validly proposed with a similar assent.

Unless the articles demand that an amendment be seconded before being voted upon, an amendment should be put to the vote even though there is no seconder (*In re Horbury Bridge Coal Co.*, 1879, 11 Ch.D. 109 at p. 118). Subject again to the regulations, an amendment need not be in writing so long as its purport is made sufficiently clear to the meeting by oral enunciation (*Henderson* v. *Bank of Australasia*, 1890, 45 Ch.D. 330).

If the chairman refuses to put a relevant amendment to the meeting, the resolution to which it appertained will, if passed, be irregular (*ibid.*), and it is immaterial that the refusal was *bona fide* or that the chairman's ruling was not forthwith challenged (*ibid.*).

Reference should be made also to Part II, Chap. VII., for the general principles governing amendments.

§ 4. **Rescission of Resolutions.** A resolution once passed cannot be further considered by way of amendment or rescission at the same meeting. But its effect may be destroyed by reversal or rescission at a subsequent meeting by an appropriate resolution. Thus a special resolution altering the articles may be rendered ineffectual by another special resolution passed at a later meeting whereby the articles are restored to their original form. A resolution set aside in this way is, however, operative until the rescinding resolution is carried; in other words, the second resolution is not retrospective.

There are some cases in which the power to rescind is outside the competence of a company. Thus, where a special resolution has been passed declaring that part of the uncalled capital of the company shall be incapable of being called up except in the event and for the purposes of winding-up, no subsequent resolution can render the part of the uncalled capital affected capable of being called up otherwise than in the winding up of the company's affairs (*Companies Act*, 1929, Section 49). So also a resolution for voluntary winding-up cannot be rescinded, for the rights of creditors are involved once the winding-up is commenced by the resolution passed for that purpose (but see p. 197).

§ 5. **Effect of Resolutions.** A resolution which is in fact passed:—

(i) In compliance with the relevant formal requirements of the Act and the articles of association,

(ii) At a duly constituted meeting, and

(iii) In relation to a matter within the competence of the meeting and *a fortiori* of the company itself,

will be valid and binding upon the company, and as between the company and its members, and as between the members themselves unless it constitutes a fraud upon a minority of the shareholders or is unduly prejudicial to them without being for the benefit of the company as a whole (*Brown* v. *British Abrasive Wheel Co.*, 1919, 1 Ch. 290).

A resolution which is inconsistent with the articles is invalid unless it is passed as a special resolution (*Quin and Axtens* v. *Salmon*, 1909, A.C. 442); and a resolution which conflicts with the memorandum is ineffectual unless it is passed in pursuance of, and in conformity with, provision in the *Companies Act* for the modification of the memorandum (Section 4).

If an *ultra vires* or invalid resolution is combined as part of the same transaction with a resolution otherwise valid, the whole transaction is vitiated (*Re Imperial Bank of China, India & Japan*, 1866, 1 Ch. App. 339); but where the resolutions are distinct and indepen-

dent, the invalidity of one will not affect the other, although both are put to the vote together (*Thomson* v. *Henderson's Transvaal Estates Ltd.*, 1908, 1 Ch. 765; *Cleve* v. *Financial Corporation*, 1873, L.R. 16 Eq. 363).

Members not present at a general meeting are bound by its decisions, and are affected also by any information disclosed by any director or officer at the meeting (*Re Norwich Yarn Co., Ex parte Bignold*, 1856, 22 Beavan 143 at p. 165); but the matters dealt with must have been within the competence of the meeting and the proceedings must have complied with the requirements of the company's constitution. Thus, where the articles provided that a balance sheet should be submitted to shareholders and was to be binding upon them, it was held that the members were not bound by the contents of a director's report which was submitted in lieu of the balance sheet (*Helby's Case*, 1866, L.R. 2 Eq. 167).

A resolution which complies with all relevant formalities and is ostensibly within the competence of a meeting may be set aside by the court if its effect will be to prejudice unfairly a minority of the members (*Brown* v. *British Abrasive Wheel Co., supra*), or where it operates as a fraud on a class of shareholders (*Griffith* v. *Paget*, 1877, 5 Ch.D. 894). In the absence of fraud, however, the mere fact that a resolution will be detrimental to the interests of a minority is not, of itself, a ground for setting the resolution aside. There must be an undue prejudice created by the resolution so that it cannot be justified as being *bona fide* for the benefit of the company as a whole.

Strangers to the company, i.e., persons who are not officers or members of it, are not affected by a resolution of which they have no actual notice; but where the resolution is one which is required by the Act to be filed with the registrar (see § 6), third parties will be deemed to have notice of the contents of a resolution when it has been duly filed (*Irvine* v. *Union Bank of Australia*, 1877, 2 App. Cas. 366).

A resolution takes effect as from the date on which it is in fact passed, notwithstanding that it has been passed at an adjourned meeting of the company or of the holders of any class of shares in a company (Section 119).

§ 6. **Registration of Resolutions.** Certain types of resolutions passed by members of a company in general meeting or at a meeting of a class of shareholders must be filed with the registrar of companies. These resolutions comprise:—

(a) Special resolutions;
(b) Extraordinary resolutions;

(c) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or extraordinary resolutions.

(d) Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) Resolutions requiring a company to be wound up voluntarily, passed under Section 225 (1) (a) of the *Companies Act.*

A printed copy of any resolution falling within one or other of the above classes must be forwarded to the registrar of companies within fifteen days of its passing and must be recorded by him (Section 118 [1]).

Where articles have been registered, a copy of every such resolution or agreement for the time being in force must be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement (Section 118 [2]).

By Section 23 of the Act a company is bound, under penalty on default, on being so required by any member, to send to him a copy of the articles (if any) upon payment of one shilling or such less sum as the company may prescribe. The combined effect of these provisions is that a member can, by bespeaking a copy of the articles, procure also copies of such resolutions as must be filed with the registrar. If articles have not been registered in relation to a company, a printed copy of every such resolution or agreement must be forwarded to any member at his request, on payment of a fee not exceeding one shilling (Section 118 [3]).

Failure to comply with Sub-section 1 of Section 118 renders the company and every officer in default liable to a penalty of two pounds (Section 118 [6]).

Contravention of Sub-section 2 or 3 of the Section involves liability to payment of a fine of one pound for each copy in respect of which default is made (*ibid.*).

A liquidator is deemed to be an officer of a company for these purposes.

It need only be added that failure to register a resolution in accordance with the provisions of Section 118 will not invalidate the resolution itself; but it may be, and this must depend on the nature and purport of the particular resolution, that being unregistered, strangers to the

company will be able to assert rights against it as if the resolution had not been passed.

§ 7. **Adjournment.** It has already been seen that in the case of the statutory meeting of a company the power to adjourn is vested by the *Companies Act* in the meeting itself. In relation to this meeting of a company it follows that the articles cannot vest the power of adjournment in the chairman, but it is probable that his inherent right to adjourn where disorder renders further business impossible applies to the statutory meeting also.

As regards other meetings, the Common Law rule that a meeting of a corporate body may adjourn of its own volition will operate (*Reg.* v. *Wimbledon Local Board*, 1882, 8 Q.B.D. 459). The Common Law rule is, however, subject to any specific regulations in the articles of association of a company. It is not unusual for articles to provide that the chairman may adjourn with the consent of the meeting. In such a case it is for the chairman to decide in the honest exercise of his discretion whether or not the meeting should be adjourned, the only function of the meeting being to consent to an adjournment if the chairman decides upon it (*Salisbury Gold Mining Co.* v. *Hathorn*, 1897, A.C. 268).

Article 49 of Table A declares that "the chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting."

It will be observed that under this regulation the meeting itself can insist upon an adjournment. As a general rule notice of an adjourned meeting is not required at all (*Scadding* v. *Lorant*, 1851, 3 H.L.C. 418), the adjournment being simply a continuation of the original meeting. Table A provides also for an automatic adjournment where a quorum is not present at a meeting (other than one convened upon requisition) within half an hour from the time appointed for the meeting (Article 46).

If the chairman improperly seeks to adjourn a meeting, the members present may elect another chairman and continue to transact the business of the meeting (*National Dwellings Society* v. *Sykes*, 1894, 3 Ch. 159); but where a meeting has been properly adjourned, it is

not competent for members to remain and carry the proceedings further (*Rex* v. *Gaborian*, 1809, 11 East 77 at p. 90).

Since an adjournment is part of the original meeting, any irregularity in the convention of that meeting will affect also an adjournment of it (*Re Portuguese Consolidated Copper Mines Ltd.*, 1889, 42 Ch.D. 160).

Notwithstanding the identification of adjournments with the original meeting, business transacted at an adjourned meeting of a company is regarded as having been effected on the date of the adjournment. This results from the provisions of Section 119 of the *Companies Act*, whereby it is enacted that a resolution passed at an adjourned meeting of a company or of the holders of any class of shares in a company shall for all purposes be treated as having been passed on the day on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Once a meeting has been convened there is no power to postpone it (*Smith* v. *Paringa Mines*, 1906, 2 Ch. 193). The proper procedure is to hold the meeting and to adjourn it. Articles of association may, however (*semble*), confer specific power on the directors to postpone a meeting. The fact that they may "fix the time and place of the meeting" does not give them such power (*ibid.*).

The chairman of a meeting may dissolve it whenever the whole of the business for which it was convened has been duly accomplished.

§ 8. **Evidence of Validity of Meetings.** Where the regularity of the convention of a meeting or the propriety of the proceedings thereat is challenged, it is a question of fact as to whether the due formalities have been observed or not. This question must generally be decided by direct evidence tending to establish the validity or otherwise of the proceedings, e.g., evidence of notices having been duly sent, or, on the other hand, of non-receipt or evidence going to show that the chairman improperly refused to allow an amendment to be put and so on.

In the case of meetings of members or directors of a company, the validity of such meetings is supported by a statutory presumption. By Section 120 (2) of the *Companies Act* it is provided that where minutes of any general meeting of a company, or of a meeting of directors, have been made in accordance with the requirements of Sub-section 1 of Section 120 (see *post*, p. 182), then *until the contrary is proved*:—

(i) The meeting shall be deemed to have been duly held;

(ii) All proceedings at the meeting shall be deemed to have been duly had; and

(iii) All appointments of directors, managers or liquidators shall be deemed to be valid.

The effect of this provision is that, subject to the minutes having been made and signed as required by the Act, the onus of proof is upon any person seeking to impeach the regularity of a general meeting of a company or of a meeting of directors or the validity of the proceedings at such a meeting.

CHAPTER XIII

VOTING AND MINUTES

The persons who are entitled to vote at meetings of a company will be defined by its constitution. The memorandum of association may fix the rights attaching to shares, including rights of voting, but it is more usual for such rights to be regulated by the articles of association, which may confer power to issue shares upon such terms and with such rights as the directors or the company in general meeting may determine (see e.g., Table A, Article 2). If no provision as to voting is made by the memorandum or articles, and the provisions of Table A in this regard are excluded from applying to the company, Section 115 (1) (f) enacts that every member shall have one vote in respect of each share or each ten pounds of stock where the company was formed with a share capital, while in any other case each member shall be entitled to one vote.

§ 1. **Who May Vote.** So far as provision is made by the company's constitution, voting rights will be determined by such provision. Certain classes of shares may be denuded of any right to vote or may carry such a right only in specified circumstances. Thus it is not unusual to find that the holders of preference shares shall have no voting rights in respect of such shares unless the preference dividend is not paid and is in arrear. In *Coulson* v. *Austin Motor Co.*, 1927, 43 T.L.R. 493, preferred ordinary shares had been issued carrying a right to a dividend of one per cent. payable in each year exclusively out of the profits earned in that year. The terms of issue provided that no voting rights should attach to the shares unless the dividend was in arrear for more than three months. A holder of such shares claimed the right to attend meetings of the company and to vote thereat when no dividend had been paid for a long period. It was held that as no profits had been earned, no dividends had become payable under the conditions attaching to the shares. Hence the dividend could not be regarded as being in arrear and the shareholder was not in the circumstances entitled to be summoned to meetings of the company.

Where voting rights depend upon the memorandum, they may be altered in the mode (if any) prescribed by that instrument, or, if no

mode be prescribed, by an arrangement under Section 153 of the Act. Rights which are defined by the articles may be varied by special resolution altering the articles unless a different method is laid down by them. Any such variation will be subject to the general limitations on altering the articles which have already been noticed (p. 137 *supra*). In some cases rights attaching to a class of shares can be modified by a resolution or agreement of the class concerned. The means of impeaching an abuse of such a power of modification is provided by Section 61 of the Act, and has been dealt with in Chapter X.

By Article 54 of Table A, every member present in person is entitled to one vote on a show of hands, while on a poll every member is entitled to one vote for each share of which he is the holder. No member can, however, vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid (*ibid.*, Article 57). This regulation precludes the assertion of voting rights upon shares in respect of which all sums due have been paid if the holder is in default in respect of other shares in the company. The disqualification from voting is extended to class meetings by Article 3 of the Table.

Under Article 33, where fully paid shares have been converted into stock, the holders of the stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards voting at meetings of the company as if they held the shares from which the stock arose; but no such privilege or advantage shall be conferred by any aliquot part of such stock as would not, if existing in shares, have conferred that privilege or advantage.

Every person whose name appears on the register of members is, *prima facie*, a member of the company and may vote accordingly (*Companies Act*, Sections 95, 102). The register is evidence of membership and, if the articles so provide, will furnish the sole test (subject to rectification by the court) of the right to vote (*Pender* v. *Lushington*, 1877, 6 Ch.D. 70).

In *Wise* v. *Lansdell*, 1921, 1 Ch. 420, the registered owner of fully paid shares in a private company charged them in favour of a creditor and handed to him the share certificates and a blank transfer. The shareholders subsequently gave other equitable charges to other mortgagees. On his bankruptcy, his trustee disclaimed "all my interest" in the shares by virtue of the power given in Section 54 of the *Bankruptcy Act*, 1914, to relieve the estate of a bankrupt from the burden of onerous property such as shares with an uncalled liability. At the time of the disclaimer the blank transfer had not been completed and lodged with the company, and as none of the mortgagees applied for a vesting order, the bankrupt's name remained on the

register. It was held that as between himself and the company, the bankrupt, so long as his name remained on the register, was entitled to vote in respect of the shares, though as between himself and the mortgagees he could only vote as they dictated.

It may be noted in this connection that the trustee of a bankrupt shareholder can generally claim to be entered on the register in place of the debtor. Where such registration is effected, the trustee becomes personally liable for capital unpaid on the shares, but is entitled to exercise the rights arising out of them, e.g., the right to vote (*Re Benthams Mills Spinning Co.*, 11 Ch.D. 900, and see also Article 21 of Table A).

The personal representative of a deceased shareholder can demand to be entered on the register of members in place of the deceased; and the directors cannot refuse that registration, unless the articles give them power not merely to reject a transfer, but also to withhold registration where shares are transmitted by operation of law (*Re Bentham Mills Spinning Co., supra*). The executor or administrator, as the case may be, of a deceased shareholder is entitled after entry on the register to vote in respect of the shares of which he is registered as owner. Where there are several executors, they have the right to determine in what order their names are to be registered as joint owners (*Re Saunders & Co. Ltd.*, 1908, 1 Ch. 415).

Joint owners of shares may, as between themselves, decide by agreement which of them shall be entitled to vote in respect of the shares which they jointly hold; but in order to define the position as between them and the company, articles will generally provide that the holder first named in the register shall vote on behalf of all of them (see e.g., Article 55 of Table A).

The vote of a corporation which is a member of a company may be given by its duly authorised representative (*Companies Act*, Section 116).

An alien enemy cannot vote while hostilities continue (*Robson* v. *Premier Oil Co.*, 1915, 2 Ch. 124); but if shares belonging to an enemy national are vested in the Public Trustee, he may exercise the voting rights attaching to those shares (*Re Pharaon et fils*, 1916, 1 Ch. 1).

A right to vote at general meetings is sometimes conferred upon debenture holders where it is desirable that, for the better protection of their security, they be given a voice in the management of the company. Debenture holders as such cannot, however, vote with effect upon an extraordinary or a special resolution, since Section 117 requires in such cases a majority "of three-fourths of such *members* as . . . vote."

The holder of a share warrant may be entitled to vote as a member, although he is not a member in the real sense. Such a holder may

vote even upon an extraordinary or special resolution, for by Section 97 (5) the bearer of a share warrant may, if the articles so provide, be deemed to be a member of the company for all the purposes of the Act, either to the full extent or for any purposes defined in the articles.

§ 2. **Mode of Voting.** The Common Law method of voting, i.e., by a show of hands, prevails at meetings of a company subject to any contrary provision in the articles of association (*Re Horbury Bridge Coal Co.*, 1879, 11 Ch.D. 109, at pp. 113, 115). By Article 50 of Table A, at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is duly demanded. In the absence of a demand for a poll, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution (*ibid.*).

These provisions of Article 50 of Table A (where they apply) are in addition to and not in derogation of Section 117 (3) of the *Companies Act* itself, which enacts that at any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of, or against, the resolution. In *Re Grahams Morocco Co.* (1932, S.C. 269) the chairman at an extraordinary general meeting declared that a special resolution had been carried by the requisite majority. In fact it was carried by the votes of members not qualified to vote. No poll was demanded, and it was held that the declaration of the chairman could not be reviewed.

Where Table A is applicable, Article 50 will regulate voting at meetings of a class of shareholders, unless different provision is made by special articles (Table A, Article 3).

Where several resolutions are to be considered by a meeting they should be put separately, and must be so put if any member so requires (*Patent Wood Keg Syndicate* v. *Pearse*, 1906, W.N. 164). If a number of resolutions are put *en bloc* and they are unanimously adopted, the procedure will in any case be effective to pass all of them (*In re Jones* [*R.E.*] *Ltd.*, 1933, 50, T.L.R., 31), save such as are *ultra vires* (*Thomson* v. *Henderson's Estates*, 1908, 1 Ch. 765).

§ 3. **Exercise of Voting Rights.** The vote of a shareholder is

a right of property which the court will intervene to protect (*Pender* v. *Lushington*, *supra*), and it may be utilised, in normal circumstances, in whatsoever manner the holder pleases. Where the beneficial interest in shares reposes in some person other than the registered holder, the formal right to vote remains vested in that holder, so that the company is bound to receive his vote and not that of the beneficiary or mortgagee. As between the registered holder and the person having a beneficial interest, however, the voting rights attaching to the shares should be exercised in accordance with the direction of those entitled to the beneficial interest (*Greenwell* v. *Porter*, 1902, 1 Ch. 530); and the duty so to do may be enforced by mandatory injunction (*Puddephatt* v. *Leith*, 1916, 1 Ch. 200). When, for example, an agreement to sell and purchase special shares has been entered into, the beneficial interest is transmitted to the purchaser, but the legal title remains vested in the vendor until registration of the requisite transfer. In the interval between sale and registration, the transferor has the power to vote and the right to claim dividends, but, in the absence of contrary agreement, he is deemed to hold the shares in trust for the transferee; the vendor should, therefore, vote as required by the purchaser at meetings held in that interval.

Subject to contrary provision in the articles, a shareholder may legitimately exercise his voting power in regard to a resolution in the adoption or rejection of which he has a pecuniary interest; and where he votes *qua* shareholder, the position is the same even though he is also a director of the company (*North-West Transportation Co.* v. *Beatty*, 1887, 12 App. Cas. 589). Similarly, a provision in the articles precluding a director from voting upon a matter in which he has an interest will not deprive him of his vote as a shareholder when such a matter is considered by a meeting of the company (*East Pant-du United Lead Mining Co. Ltd.* v. *Merryweather*, 1864, 2 H. & M. 254). On the other hand, if the directors have acted in breach of trust, they cannot effectively utilise their voting power as shareholders so as to absolve themselves from the consequences of that breach (Section 152), or to withdraw from the company any right or interest in property to which it would have been entitled but for such breach (*Cook* v. *Deeks*, 1916, 1 A.C. 554). In the case cited, three directors obtained a contract in their own names in circumstances which amounted to a breach of their fiduciary duty to their company. The effect of that breach was to constitute them constructive trustees for the company of the benefit of the contract. The directors then proceeded to convene a general meeting at which they employed their votes as holders of three-quarters of the issued shares to procure the passing of a resolution which declared that the company had no interest in the contract.

It was held that the benefit of the contract belonged in equity to the company, and that the directors could not properly use their voting power to vest it in themselves.

The motive which impels a shareholder to exercise or delegate or otherwise deal with his voting rights is immaterial to the validity of his dealing with them. Thus, a member may transfer his shares or part of them to different persons so as to increase the voting power which he can command upon a show of hands or otherwise (*Moffatt* v. *Farquhar*, 1878, 7 Ch.D. 591; *Re Stranton Iron Co.*, 1873, L.R. 16 Eq. 559); and directors may acquire shares from existing holders in order to obtain a greater voting power in the company (*North-West Transportation Co.* v. *Beatty*, *supra*). It is otherwise where directors *allot* shares with a view to creating a voting force in the allottees which the directors will be in a position to influence as they may desire; for the power of allotment is vested in the directors on behalf of the company and not as a personal right. Accordingly that power must be exercised *bona fide* for the benefit of the company and not for any reason of self-interest or for some other oblique motive (*Piercy* v. *Mills & Co.*, 1920, 1 Ch. 77). Where shares have been improperly allotted, an injunction will issue to restrain the allottees from voting in respect of the shares (*Fraser* v. *Whalley*, 1864, 2 H. & M. 10). A majority of members will not be allowed to exercise their voting power in combination so as to commit a fraud on the minority (*Menier* v. *Hooper's Telegraph Works*, 9 Ch. App. 350), or to impose an undue prejudice upon them (*Brown* v. *British Abrasive Wheel Co.*, 1919, 1 Ch. 290).

§ 4. **Casting Vote.** The chairman of a meeting has no casting vote apart from express provision in the articles. Article 52 of Table A confers a second vote upon the chairman of a meeting where there is an equality of votes either on a show of hands or on a poll.

§ 5. **Rejection of Votes.** It is part of the function of the chairman of a meeting to decide upon the validity of votes tendered and either to allow or reject them. A copy of the register of members should be available for reference at a meeting of a company to enable this function to be properly discharged. If the articles so provide, the decision of the chairman as to the validity of a vote will be conclusive so long as that decision is arrived at *bona fide* (*Wall* v. *London and Northern Assets Corporation*, 1898, 2 Ch. 469). In any case, the power of disallowance will be subject to such regulations as the articles may contain. Thus, in one case it was provided that no objection should be taken to the validity of any vote except at the

meeting at which the vote was tendered, and that every vote not disallowed at any such meeting should be deemed valid for all purposes. The validity of a proxy under which a block of votes was given was challenged by a shareholder at an extraordinary general meeting, but the chairman after considering the objection overruled it and allowed the votes. It was held that his decision was final and could not be reviewed (*Wall* v. *Exchange Investments Corporation Ltd.*, 1926, 95 L.J. Ch. 132).

§ 6. **Poll.** It has been seen (Part II, Chap. VIII) that there is, at Common Law, a right to demand a poll (*Reg.* v. *Wimbledon Local Board*, 8 Q.B.D. 459). Any person entitled to attend a meeting and present at it may assert this right unless it is modified or excluded by specific regulations applicable to the meeting (*Campbell* v. *Maund*, 5 Ad. & E. 879).

As regards voting upon an extraordinary or a special resolution, the *Companies Act* provides in Section 117 that at any meeting at which such a resolution is submitted to be passed, a poll shall be taken to be effectively demanded, if demanded:—

(a) By such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand; or

(b) If no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per cent. of the paid-up share capital of the company.

When a poll is demanded in accordance with this Section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of the Act or the articles of the company (Section 117 [4, 5]). These provisions, while permitting modification by the articles of the Common Law rule that one person may demand a poll, restrict the extent to which modification is possible and prevent the right from being extinguished altogether. The Section does not regulate polls upon ordinary resolutions, so that as regards such resolutions the taking of a poll will be governed by the Common Law and the articles of association (if any) touching the question.

Under Table A it is provided (Article 50) that:—

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on

the declaration of the result of the show of hands) demanded by at least three persons present in person or by proxy entitled to vote, or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen per cent. of the paid up capital of the company.

This form of article applies to ordinary as well as to extraordinary and special resolutions.

By Article 51 of the Table, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was taken.

This regulation empowers the chairman to determine the method of taking the poll, and so long as he acts honestly and reasonably his decision in this regard will not be upset. Where, however, the tenor of the articles indicates (as under Table A and in most forms) that voting on a poll is to be by members in person or by their proxies duly appointed, the chairman cannot direct that the poll be taken by voting papers to be returned by members through the post; and this is so notwithstanding provision in such articles that a poll should be taken in such manner as the chairman of the meeting directs (*McMallan* v. *Le Roi Mining Co. Ltd.*, 1906, 1 Ch. 331). In another case, articles of a company stated that where a poll was duly demanded, it was to be taken at a time and place to be fixed by the directors within seven days from the date of the meeting. It was held that this provision did not contemplate the taking of a poll immediately upon demand being made, and that a poll so taken was accordingly bad (*Re British Flax Producers Co. Ltd.*, 1889, 60 L.T. 215).

As to the time for taking a poll, Article 53 of Table A declares that a poll on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Apart from any express provision, a poll may be taken immediately on demand being made (*Re Willington Iron Co.*, 1885, 29 Ch.D. 159).

The holder of a proxy is not entitled to participate in demanding a poll except by virtue of express authorisation. Table A, for example, provides that the instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll (Article 62). The donee of a proxy was held not entitled to demand a poll under articles which empowered " shareholders qualified to vote " to make such a demand, for the holder of a proxy does not hold the shares registered in the name of the donor (*Reg.* v. *Government Stock Investment Co.*, 3 Q.B.D. 442).

The representative of a corporation appointed under the provisions of Section 116 of the Act to attend a meeting of a company has, by virtue of that Section, the same right to demand a poll as if he were an individual member of that company.

Joint holders of shares may be reckoned as "members" for the purpose of demanding a poll, if the articles so provide (*Siemens Bros. & Co.* v. *Burns*, 1918, 2 Ch. 324); in the absence of any provision they are to be regarded as a single holder (*Cory* v. *Reindeer Steamship Co.*, 1915, 31 T.L.R. 530).

Where the right to demand a poll was vested by the articles in "members" holding a specified number of shares, it was held that trustees jointly holding the prescribed number could exercise the right, the expression "members" including the singular (*Siemens Bros. & Co.* v. *Burns*, *supra*). In this case the company's articles contained an express provision that words importing the plural number should include the singular, but it appears that the decision on general grounds would have been the same without the assistance of this article. It would, of course, be otherwise if the articles state that "two or more members" may demand a poll, in which case a demand by one member, or by joint holders representing a single holding, would be ineffective.

A separate poll must be taken on each of several resolutions before a meeting where a poll has been demanded (*Blair Open-Hearth Furnace Co.* v. *Reigart*, 1913, 108, L.T. 665). A poll taken on a number of resolutions together is invalid (*Patent Wood Keg Syndicate* v. *Pearse*, 1906, W.N. 164). It has already been stated (*supra*, p. 145) that a vote on a show of hands on resolutions put *en bloc* may be effective (*Re Jones [R.E.] Ltd.*, 1933, 50 T.L.R. 31), the decision in that case being influenced by the fact that there was a right to demand a poll, so that a separate count could have been taken on each resolution had the members, or sufficient of them, so required (*ibid.*, at p. 32). In *Reg.* v. *Roberts*, 1863, 3 B. & S. 495, where an amendment negativing an original resolution was allowed to be put and a poll was taken on both the resolution and the amendment together, it was held that the poll was valid. This conforms to principle, since where an amendment is a mere negative it does not create a different motion for the consideration of the meeting, which remains concerned only with the original question.

The chairman has no right to direct a poll unless it is duly demanded or the articles give him power independently of any demand; but if a poll is irregularly demanded, and is in fact taken without objection being raised, the irregularity is deemed to have been waived and the poll is valid (*Campbell* v. *Maund*, *supra*). On the other hand, even if the articles require a poll to be taken on every extraordinary

or special resolution which is not resolved upon without a dissentient (as in *Etheridge* v. *Central Uruguay Northern Extension Railway*, 1913, 1 Ch. 425), such a resolution, if passed, despite opposition, on a show of hands will be valid though no poll is demanded or taken.

If a poll is duly demanded and the chairman refuses to take it, the resolution or election concerned will be invalid though passed or made upon a show of hands (*Ex parte Grossmith*, 1841, 10 L.J.Q.B. 359).

The articles may fix the time for which a poll is to continue; otherwise it must be kept open for a reasonable time, and the chairman should not close it so long as votes are being tendered (*Reg.* v. *St. Pancras Local Board*, 1839, 11 A. & E. 356).

The hours during which votes may be given on a poll should be fixed by the chairman if not specified by the articles. The votes should be taken in writing (though this is not essential where articles do not require it) and the signature of voters should be required for the purpose of verification and to prevent or deter personation. Counting by scrutineers is desirable, but apart from regulations, a voter has no right to demand a scrutiny (*Re Hammersmith Vestry*, 1852, 16 J.P. 632); a poll should not, however, be taken so as to prevent a scrutiny.

A member not present at the meeting at which a poll is demanded may vote on the poll (*Reg.* v. *Wimbledon Local Board*, *supra*). If a person entitled to vote is improperly excluded from a poll the result may be to invalidate the poll (*Reg.* v. *Lambeth*, 1838, 8 A. & E. 356). Votes given by proxy must be admitted on a poll where voting by proxy is allowed by the articles, the object of demanding a poll being to enable the general body of voters to come in and vote. Article 58 of Table A declares that on a poll votes may be given either personally or by proxy.

The taking of a poll is an enlargement of the meeting to which it relates; and where the time for taking a poll is deferred in pursuance of power in the articles, there is not, strictly speaking, an adjournment of the meeting, and the rules governing such an adjournment will have no application.

Thus the chairman of a meeting can adjourn it on account of disturbance which makes it impossible for the proceedings to continue, but he cannot in similar circumstances *close* a poll prematurely (*Reg.* v. *Graham*, 1866, 25 J.P. 437). On the other hand, where the regulations empower the chairman to adjourn for the purpose of taking a poll, he may fix a date subsequent to that of the meeting even though a majority of the members present desire that it should be taken forthwith.

§ 7. **Proxies.** The general principles which govern the delegation to a proxy of the right to vote at a meeting have already been discussed

(Part II, Chap. VIII). As there is no right to vote by proxy at Common Law (*Harben* v. *Phillips*, 1883, 23 Ch.D. 14), a member of a company can effectually appoint a proxy to vote on his behalf at meetings of the company only where express provision in that regard exists. Such provisions may appear in the articles of association or in the *Companies Act* itself. In either case the exercise of the right to vote by proxy must conform exactly with the requirements of those regulations to which the right owes its origin and existence; and the donee must act within the limits of the authority with which the proxy invests him (*Howard* v. *Hill*, 1888, 59 L.T. 818). Where the proxy is invalidly given, or is irregularly employed, the vote cast by the appointee will be void (*McLaren* v. *Thomson*, 1917, 2 Ch. 261).

In *re Waxed-Papers Ltd.*, 1937, 2 A.E.R. 481, a proxy was given by a shareholder to the chairman of a meeting authorising him to act for the donor at a meeting which was to be held for the purpose of considering, and if thought fit, approving, with or without modification, a proposed scheme of arrangement. It was held that the power of voting conferred on the holder of the proxy was not limited to voting for or against the scheme, but was sufficiently wide to enable him to vote on any incidental matter which might arise before the main question for which the meeting was convened came to be considered. The proxy could accordingly be employed for the purpose of voting on a resolution to defer the consideration of the scheme to a future occasion.

The authority conferred on the donee of a proxy will thus depend primarily on the regulations which permit a proxy to be given and secondarily upon the terms of the instrument of proxy itself. An authority to vote only at a particular meeting or at an adjournment of it is termed a " special " proxy and must bear a penny stamp (*Stamp Act*, 1891, Section 80). Where the proxy empowers the donee to vote at more than one meeting or at some unspecified meeting, it is styled a " general proxy " and must be stamped with a ten-shilling stamp. A proxy which authorises the holder to vote " at the next election " is a general proxy, the meeting at which it is to be used not being specified with sufficient particularity (*Reg.* v. *McIverney*, 1891, 30 L.R. Ir. 49); and a proxy to vote " at any ordinary or extraordinary meeting of the company " falls into the same category and must be similarly stamped (*Isaacs* v. *Chapman*, 1916, W.N. 28), even though only one meeting is in fact held during the year in question.

Where a penny stamp is sufficient it may be impressed or adhesive; but the proxy must be stamped prior to execution (*Stamp Act*, 1891, Section 80), except where it has been executed abroad, when it may properly be stamped after receipt in this country (*Finance Act*, 1907, Section 9). A penalty of £50 may be imposed where an unstamped

proxy is made or acted upon, and the vote given under it is void (*Stamp Act*, 1891, Section 80). An adhesive penny stamp must be cancelled on execution, or, in the case of a proxy executed abroad, on stamping. Any mark of a defacing character will be a sufficient cancellation (*McMullen* v. *Hickman Steamship Co.*, 71 L.J. Ch. 766). The form of proxy may be prescribed by the regulations which confer the right to vote by proxy. Thus Article 58 of Table A provides that on a poll votes may be given either personally or by proxy, and Article 59 requires that the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. These regulations are carried further by Article 60, which states that an instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:

.....Company, Limited

"I,....., of.....
in the county of....., being a member of the
.....Company, Limited, hereby appoint.....
of.....as my proxy to vote for me and on my behalf
at the (*ordinary or extraordinary as the case may be*) general meeting
of the company to be held on the.....day of.....
and at any adjournment thereof."

Signed this.....day of.....

Where a proxy is given by joint holders of shares, it appears that the proper person to execute the proxy form is that one of the joint holders who is entitled to vote on behalf of all of them.

The donee of the proxy need not be actually named in the instrument so long as it identifies him (*Bombay Burmah Trading Co.* v. *Shroff*, 1905, App. Cas. 213). It is a common practice for a proxy form to be given "in blank," i.e., with the name of the intended donee omitted. Such a proxy will be valid if some person is authorised, whether verbally or otherwise, to fill in the blank (*Re Lancaster*, 1877, 5 Ch.D. 911); and so long as the instrument was duly stamped at the time of execution it will not be invalidated by the subsequent insertion of the name of the donee (*Sudgrove* v. *Bryden*, 1907, 1 Ch. 318).

The authority to complete a blank proxy may extend to omitted particulars other than the appointee's name. Thus in *Ernest* v. *Loma Gold Mines*, 1897, 1 Ch. 1, it was held that, on the special facts of the case, the secretary of the company had an implied authority to insert the date in proxy forms where the appointor had failed to fill it in.

This decision must not be taken as creating a general principle, beyond the proposition that, apart from an express authority to complete a proxy form lacking in certain particulars, the facts of a given case may be sufficiently strong to imply an authority in that regard.

It is part of the function of the secretary of a company to scrutinise proxy forms which are lodged with the company and to direct the attention of the board to any informality or irregularity. It is not unusual for articles of association to permit proxies to be given only to members of the company. In such a case it is sufficient if membership is acquired before the authority given by the proxy is exercised, and it is immaterial that the proxy-holder was not a member when the proxy was given (*Bombay Burmah Trading Co.* v. *Shroff*, *supra*). Table A of the 1929 Act contains no limiting provision, Article 59 stating explicitly that a proxy need not be a member of the company.

Where a proxy is given to a member of the company, it can be effectively exercised only upon a poll being taken, for only one vote can be cast by any person present upon a show of hands; if a proxy may properly be and is in fact given to a stranger to the company, it would appear that, subject to the articles of association, the donee can effectively vote upon a show of hands (*Randt Gold Co.* v. *Wainwright*, 1901, 1 Ch. 184). It is to be noted that Table A restricts the use of a proxy to voting where a poll is taken (Article 54), but expressly provides that the instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll (Article 62).

Independently of any power given by the articles, the directors of a company are entitled to employ its funds in printing and despatching to members proxy forms filled up with the names of the directors or their nominees as proxies, and in stamping the envelopes for return of the completed forms. This right of the directors is tacit in their duty to exercise their powers *bona fide* for the benefit of the company, and accordingly to take all legitimate steps to further that policy which they deem to be in the best interests of the company (*Peel* v. *L. & N.W. Rly.*, 1907, 1 Ch. 5). There is no obligation, when circularising shareholders for this purpose, to state also the views of any opponents (*Campbell* v. *Australian Mutual Society*, 1909, 77 L.J.P.C. 117). The meeting in connection with which the proxies are sought must, however, have been convened in the interests of the company and not merely of the directors (*Peel* v. *L. & N.W. Rly.*, *supra*).

For the purpose of confirmation and verification where necessary, and to avoid confusion, articles of association invariably require that an instrument of proxy must be lodged with the company a specified time before the meeting at which it is to be employed. For

example, Article 60 of Table A provides that the instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

A regulation in this form permits a proxy to be exercised at an adjourned meeting if the instrument of proxy is lodged forty-eight hours before the time to which the meeting is adjourned, though after the date of the original meeting. Where a poll is demanded, however, the interval for taking the poll is not regarded as an adjournment so as to permit a proxy to be lodged between the time of the demand and the taking of the poll (*Shaw* v. *Tati Concessions Ltd.*, 1913, 1 Ch. 292). The corresponding clause in the 1908 Table A did not permit lodgment of a proxy after the original meeting, and in such a case a proxy lodged the prescribed period before the adjourned meeting, but not before the original meeting, is invalid (*McLaren* v. *Thomson, supra*).

In the absence of any provision requiring a proxy to be lodged prior to the holding of the meeting at which it is to be exercised, it would appear that a vote tendered by a proxy ought to be accepted although he is not able at the meeting to establish his authority by production of the proxy paper (*English, Scottish & Australian Bank*, 1893, 3 Ch. 385).

A statutory right to vote by proxy exists in connection with certain operations under the *Companies Act*. These include:—

(a) Compromises and arrangements under Section 153.

(b) Resolutions of meetings of contributories in the winding-up of a company (see Chapter XV).

Moreover, by Section 116, a corporation which is a member of a company can authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company; and a person so authorised is entitled to exercise on behalf of the corporation which here presents the same powers as that corporation could exercise if it were an individual shareholder of that other company. This right in a corporate member of a company is independent of any provision in the articles of association, which, however, frequently reproduce it as part of the regulations relating to voting (see e.g., Article 63 of Table A). The authority of the representative is to be conferred by resolution

of the directors or other governing body of the corporation (Section 116). In *Colonial Gold Reef Ltd.* v. *Free State Rand Ltd.*, 1914, 1 Ch. 382, it was held that a vote given by a representative who claimed to have been so appointed was valid where an instrument purporting to be a copy of the resolution required by the Section had been produced at the meeting and was not then objected to or challenged.

By Article 56 of Table A a member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person appointed by that court, and any such committee, *curator bonis* or other person may, on a poll, vote by proxy.

The appointment of a proxy can be revoked as between the donor and the donee, so as to extinguish the right of the appointee to vote except where the authority of the proxy is:—

(i) Coupled with an interest, i.e., the donee has some pecuniary interest in the authority given to him, in which case revocation is impossible without the concurrence of the donee for so long as the interest subsists (*Raleigh* v. *Atkinson*, 1840, 6 M. & W. 670); or,

(ii) Conferred by an instrument under seal (i.e., a power of attorney) whereby the authority is expressed to be irrevocable, either for a fixed period not exceeding one year certain or for valuable consideration (*Law of Property Act*, 1925, Sections 126 and 127).

Apart from these cases, the donor of a proxy can withdraw authority from the donee at any time. It does not, however, follow that an arbitrary revocation will necessarily be effective as between the company and the appointor. To obviate the difficulties which might result from the lodging of a proxy with the company and its subsequent revocation, articles sometimes require that notice of revocation must be given to the company a specified period prior to the meeting. Where such a stipulation exists, a revocation between the holding of a meeting and the taking of a poll is ineffectual as between the donor and the company so that the vote of the donee will be received, and not that of the appointor (*Spiller* v. *Mayo* [*Rhodesia*] *Co.*, 1926, W.N. 78). So also a revocation between an original meeting and its adjournment will be disregarded by the company where notice prior to the original meeting is demanded by the articles (*Cousins* v. *International Brick Co.*, 1931, 2 Ch. 90). Where, however, the donor of the proxy attends the meeting in person and votes, he impliedly revokes the proxy, and his vote must be accepted (*Knight* v. *Bulkeley*, 5 Jur. (N.S.) 817); and this is still the case where notice of revocation before the meeting is required under the company's constitution, for the right to vote in person is

paramount to the right of proxy (*Cousins* v. *International Brick Co.*, *supra*); but if the articles provide that the appointor of a proxy shall be absolutely precluded from voting unless the proxy is revoked in the manner prescribed, the appointor's vote may (*semble*) properly be rejected where there has been no revocation in the stipulated manner (*ibid.*).

The death of a shareholder who has given a proxy operates to revoke it unless there is some contrary provision in the articles of association, or unless the proxy was conferred by an irrevocable power of attorney (*supra*).

§ 8. **Minutes of General Meetings.** The function of minutes as a record and the desirability of keeping them are discussed on general grounds in Part II, Chap. X.

There is a more specific reason that records of the proceedings of companies should be kept, inasmuch as their activities involve considerable capital, much of which is provided by public subscription. Hence statutory provision is made whereby a company is required to ensure that minutes be kept. Section 120 of the *Companies Act* enacts that:—

(1) Every company shall cause minutes of all proceedings of general meetings.....to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company.....then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened and all proceedings thereat to have been duly had, and all appointments of directors, managers, or liquidators shall be deemed to be valid.

It should be noted that:—

(i) The Section imposes the duty to cause minutes to be kept upon the company itself;

(ii) The minutes signed as required by the Section are admissible as evidence of the facts they record. This is not to say that they are conclusive evidence or the only evidence of the holding of the meeting or the results thereof. Other relevant evidence may be employed to establish, e.g., that a resolution not recorded in the minutes was in fact passed (*Re Fireproof Doors Ltd.*, 1916, 2 Ch. 142). The minutes, such as they may be, are *prima facie* evidence only,

that is to say, they are to be admitted as a true and complete record of the proceedings until they are proved to be inaccurate or deficient (*Re Indian Zoldone Co.*, 1884, 26 Ch.D. 70).

(iii) Where minutes are duly made and signed they provide evidence, not merely of their contents, but also of the regularity of the meeting itself. Here again, however, the evidence is capable of rebuttal. The fact that proceedings have been duly minuted will not, for example, prevent direct evidence being adduced to show that the notice convening the meeting was bad (*Betts & Co.* v. *Macnaghten*, 1910, 1 Ch. 430).

(iv) The requirements of Sub-section 1, are not satisfied by minutes kept in a "loose-leaf" book from which sheets may be removed or in which sheets may be interpolated with facility (*Hearts of Oak Assurance Co. Ltd.* v. *James Flower & Sons*, 1936, 1 Ch. 76). Minutes kept in such form are not regarded as having been "entered in books" and are not therefore rendered admissible in evidence by Sub-section 2.

§ 9. **Inspection of Minutes.** The books containing the minutes of proceedings of any general meeting of a company must be kept at the registered office of the company and must be open to inspection of any member without charge during business hours. The company may by its articles, or by resolution in general meeting, restrict the period for which the minutes are available for inspection; any such restriction must, however, be reasonable, and the period cannot in any circumstances be reduced below two hours in each day.

Any member is entitled to be furnished with a copy of the minutes, at a charge not exceeding sixpence for every hundred words, within seven days after request by him. Where a member is denied the right of inspection, or is not duly provided with a copy of the minutes after request, the company and every officer in default is liable to fine not exceeding £2 for each offence, and to a default fine of similar amount.

The court may, where circumstances require it, make an order compelling an immediate inspection of the books in respect of all proceedings of general meetings, or directing that copies be sent on the application of any person entitled to such inspection or copies and aggrieved by the default of the company (Section 121).

The default fine of £2 is payable for each day in respect of which the default complained of continues (Section 365 [1]).

CHAPTER XIV

MEETINGS OF DIRECTORS

THE internal administration of a company, affecting as it does the relation between the company and its members, is largely a matter of domestic concern, so that the regulations which govern it may be constructed out of the terms of the articles of association; the conduct of the company's affairs must produce, however, a secondary reaction, inasmuch as it touches the rights, property and position of persons external to the company who may be attracted into the relationship of creditor or shareholder with it. Hence it is that in certain of its aspects the management of companies registered under the Act is directly governed by statutory provisions.

§ 1. **Function of Directors.** It is clear that the company's capacity to operate effectively in law must be applied through some human agency. For this purpose, the shareholders acting together in general meeting might provide the means of giving effect to the executive function of their company. To this, however, there are certain obvious objections. The opportunity for dissension, the difficulties of co-ordination and a diversity of individual interests would produce confusion, and would almost certainly impede the working of the company's affairs. It has always, for this reason, been the practice to delegate powers of management of the company to a committee of persons styled the "board of directors." The practice has been made a statutory necessity in relation to public companies registered after the commencement of the Act of 1929. Section 139 requires that in every such company there shall be not less than two directors. The occasion for this provision lies in the necessity to fix responsibility in the event of default in the conduct of the affairs of a registered company. By making the existence of directors essential, a statutory focus of liability is created. The occasion for thrusting liability of this character upon specific persons engaged in the management of a company is not so urgently necessary in connection with the affairs of a private company, and for this reason the Act does not lay down any statutory minimum as being necessary to constitute the board of directors of private companies. This relaxation would appear

to suggest that a private company need not, in practice, appoint directors at all, but this inference is unsubstantial and illusory. For the interpretation Section of the *Companies Act* says that " the expression director includes any person who acts in the capacity of a director by whatsoever name called " (Section 380). This would appear to make it a question of fact as to whether any person is or is not a director in relation to the affairs of any given company. The question is simply whether or not he is performing directorial functions, and the answer is unaffected by whether or not he has been in any formal way appointed to the office.

§ 2. **Appointment of Directors.** The first directors of a company are usually appointed by the articles. If the articles do not make the appointment, the subscribers to the memorandum may do so at a meeting of them which, until shares are allotted, is an effective general meeting of the company. If the subscribers do not meet, an appointment made by writing signed by all of them will be valid (*Great Northern Salt Works*, 1890, 44 Ch.D. 472; and see Article 81 of Table A).

A person cannot be appointed a director by the articles unless, before the articles are registered, he has by himself, or by his agent authorised in writing:—

(a) Signed and delivered to the registrar of companies for registration, a consent in writing to act as such director; and

(b) either:—

(i) Signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) Taken from the company and paid for or agreed to pay for his qualification shares, if any; or

(iii) Signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) Made and delivered to the registrar for registration, a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name (Section 140).

By Section 143, the acts of a director are to be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

§ 3. **Qualification of Directors.** Although, so far as public companies are concerned, directors must be expressly appointed,

the *Companies Act* does not itself demand that they shall, as a condition precedent to appointment, enter into membership of the company; they need not, that is to say, be qualified by the holding of any shares in the company to whose board they are appointed.

As a matter of commercial policy, it is, however, desirable that the directors of a company should have some pecuniary interest in its affairs beyond the fees and remuneration to which they may be entitled. The articles of most companies recognise this by requiring that members of the board of directors should be registered as the holders of a share or shares as qualification for their office. The First Schedule of the Act fixes the holding of at least one share in the company as the requisite qualification for the directorship of a company to which Table A applies.

Wherever the constitution of the company demands a share qualification, there is statutory provision as to the circumstances in which the appropriate qualification be acquired and held. The Act demands that it shall be the duty of every director who is, by the articles of the company, required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment or in such shorter time as may be fixed by the articles. It is further provided that the holding of a share warrant shall not satisfy the requirements of share qualification, that is to say, the director must be registered as the holder of the shares necessary to constitute his qualification under the articles.

Wherever a director of a company fails to obtain his qualification within two months after his first appointment, or has ceased to hold it at the expiration of that period, he becomes disqualified from acting, and cannot afterwards be reappointed to the board unless and until he first acquires his qualification (Section 141).

If a person, after the expiration of the time allowed, continues to act as the director of a company without having become qualified so to do, he becomes liable to a penalty of £5 for each day during which he continues to act as a director while unqualified. His disqualification, however, does not operate to vitiate any act done by him on behalf of the company during the time in which he exercised the functions of his office (Section 143).

§ 4. **Disqualification of Directors.** Certain persons are by law rendered incapable of acting as directors of a company. Thus, the Act of 1929 provides that an undischarged bankrupt who acts as a director of a company or takes part in its management without the leave of the court by which he was adjudged bankrupt is liable to prosecution and, upon conviction, to penalties by way of imprisonment

or fine, or both. A beneficed clergyman of the Church of England cannot be a member of the board of any company carrying on a trade or business for profit other than that of fire or life insurance. In specific cases, the court has power to declare that certain persons shall be incapable of acting as directors of a company for a period not exceeding five years from the date of the court's order; these cases arise in connection with the winding-up of a company (Sections 217, 275).

Except for these cases of disqualification and the case of a person who is not qualified in accordance with the terms of the company's articles (see e.g., Article 72 of Table A), any person is capable of being a director of a company.

§ 5. **Particulars as to Directors.** The *Companies Act* requires the disclosure and filing of particulars as to the persons who constitute the directors of a given company. Particulars must be shown in the annual return made by the company, as well as in the register of directors which the company is bound to keep open for inspection at reasonable times by shareholders without any fee and by other persons for a fee of not more than one shilling at its registered office (Section 144). There is further provision in the Act, whereby trade catalogues and circulars, show-cards and business letters on or in which the company's name appears must state with respect to any individual director:—

(a) His present christian name or the initial letters thereof and his present surname;

(b) Any former christian names and surnames;

(c) His nationality, if not British; and

(d) His nationality if different from that of his origin (Section 145).

The Board of Trade may, upon application, exempt a company from the obligation to comply with these requirements where special circumstances render such exemption expedient in relation to certain persons (*ibid.*). In other cases, default involves liability to a fine not exceeding £5 in respect of each offence committed. In these connections, the expression "director" is deemed to include any person in accordance with whose directions or instructions the directors of a company are accustomed to act (Section 144). It will be seen that this interpretation is intended to impose the obligation as to disclosure not only upon those persons who formally appear as members of the board of directors, but also upon persons who, while constituting the effective management of the company, operate through a dummy board. There is, however, an express saving whereby persons to whom

the directors look, from time to time, for professional assistance in connection with their directorial duties are not to be caught by this extended view of who is regarded as a member of the board of directors.

The Section does not apply at all in the case of companies registered before the 23rd November, 1916.

§ 6. **Meetings of the Board.** It has been stated that the directors of a company must act collectively as a board on behalf of their company, save in so far as authority may be delegated to an individual director to engage in transactions as agent for the company.

This principle requires that the directors should, in general, arrive at collective decisions in the administration of the company's affairs, and hence they must meet as a board (*Re Haycraft Gold Reduction & Mining Co.*, 1900, 2 Ch. 230, at p. 235). Thus, the authority of directors given independently for the summoning of a meeting of the company is not equivalent to an authorisation of the board of directors (*ibid*). If the articles so provide, however, a document signed by all the directors may be effective as if it were a resolution of the board (*D'Arcy* v. *Tamar Hill Rly.*, 1867, L.R. 2 Ex. 158).

The *Companies Act* does not prescribe any general rules as to the convention and conduct of meetings of directors. Such meetings will accordingly be regulated by general principles as qualified or developed by the articles of the company concerned.

Apart from any specific provision, every director who is within reach should be given notice of every board meeting of a company (*Halifax Sugar Refining Co. Ltd.* v. *Francklyn*, 1890, 62 L.T. 563). The omission to give notice to every director will render the proceedings at the meetings liable to be set aside (*Harben* v. *Phillips*, 1883, 23 Ch.D. 14); and this is so even where a director has professed to waive his right to be sent notices. *In re Portuguese Consolidated Copper Mines Ltd.*, 1898, 42 Ch.D. 100, notices of a board meeting were not sent to certain directors who had stated that they did not wish to attend. It was held that the resolutions purported to have been passed at the meeting were null and void. The principle here is that where a meeting is convened for the discharge of legal duties (as is the case with a meeting of directors), the persons who should participate in the deliberations of the meeting cannot effectively waive their right to notice; for coupled with that right are complementary duties (*Young* v. *Ladies Imperial Club*, 1920, 2 K.B. 523).

If, in the absence of notice, all the directors are present together and consent to a meeting being held, the proceedings at such a meeting will be valid despite the defect in convening the meeting (*Smith* v. *Paringa Mines Ltd.*, 1906, 2 Ch. 193); but if one of them objects to

the holding of the meeting and refuses to waive his right to notice, no business can be transacted, as the meeting is bad (*Barron* v. *Potter*, 1914, 1 Ch. 895).

The omission to give notice to a director who is physically incapable of attending by reason of distance from the venue of the meeting (*Halifax Sugar Refining Co. Ltd.* v. *Francklyn*, *supra*), or (*semble*) on account of serious disability, will not, of itself, invalidate a meeting of the board (*Young* v. *Imperial Ladies Club*, *supra*).

By Article 81 of Table A it is provided that a director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

§ 7. **Form of Notice.** In the absence of specific provision a verbal notice of a board meeting satisfies the requirements of the law (*Browne* v. *La Trinidad*, 1887, 37 Ch.D. 1); and, similarly, unless the articles fix the length of notice to be given, a reasonable notice will suffice. The period of notice is not adequate unless it gives to the recipient a reasonable opportunity of attending (*Re Homer District Consolidated Gold Mines*, 1888, 39 Ch.D. 546). In determining whether a notice is reasonably long or not, account must be taken, *inter alia*, of the usual practice followed by the board in the particular case (*La Compagnie de Mayville* v. *Whitley*, 1896, 1 Ch. 788). Any objection to a notice on the ground of inadequacy should be made without any delay, and the court will not declare void the proceedings at a board meeting upon a ground of objection which is not raised with due dispatch (*Browne* v. *La Trinidad*, *supra*).

Apart from any requirements in that regard in the articles of a company, notices of a board meeting need not specify special business which is to be transacted (*La Compagnie de Mayville* v. *Whitley*, *supra*).

Under Article 81 of Table A, the directors of a company to which the Table applies may meet together, adjourn and otherwise regulate their meetings as they think fit.

§ 8. **Chairman.** The chairman of a board meeting will be appointed in accordance with the articles, or, where there are no special articles and the relevant provisions of Table A are excluded, by the meeting. Under Table A, the directors are empowered to elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding it, the directors present may choose one of their number to be chairman of the meeting (Article 84). The appoint-

ment of a chairman by the directors does not give to the person so appointed a contractual right to remain in office for the term for which he was elected or for so long as he is director. Accordingly, another person may be elected in his place at any time (*Foster* v. *Foster*, 1916, 1 Ch. 532).

Where the articles prescribe the mode of appointment, an election which does not conform to the rules prescribed is void, and is not rendered valid by tacit acquiescence (*Clark* v. *Workman*, 1920, L.R. 107). In the case cited, a chairman, irregularly appointed, purported to exercise a casting vote. It was held that, although the appointment had not been challenged, the person acting as chairman was not entitled to exercise the rights attaching to the office.

Under Table A, the chairman at a board meeting is empowered to give a second or casting vote (Article 81).

§ 9. **Quorum.** The quorum at a meeting of directors will be determined by the appropriate regulations (if any) of the company's constitution. Table A declares that the quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two. Power in the articles authorising the directors to determine the number which will form a quorum enables them to fix the number at one (*Re Fireproof Doors Ltd.*, 1916, 2 Ch. 142).

Where the articles are silent as to the number required to constitute a quorum, and Table A does not apply, a majority of the board will form a quorum (*York Tramways Co.* v. *Willows*, 1882, 8 Q.B.D. 685); or where there is an established practice, the number who usually act at meetings (*Regent's Canal Ironworks*, 1867, W.N. 79).

Even though the number required for a quorum is present together, no meeting can be held unless all the directors have been given notice (*Re Portuguese Copper Mines*, 1889, 42 Ch.D. 100); and this is so even though the directors present constitute a majority of the board (*Barber's Case*, 1877, 5 Ch.D. 963).

So also, it is necessary that the board should be properly constituted, i.e., the full quorum of directors required by the articles must be in office. Thus, where the articles provided that there should be not less than four directors, but only two had been appointed for the time being, it was held that those two could not conduct a meeting (*Re Sly, Spink & Co.*, 1911, 2 Ch. 430); and the position is not changed in such a case if the articles empower the " continuing directors to act where vacancies occur," since there has never been a full complement of directors and vacancies have not arisen (*ibid.*).

By Article 83 of Table A, the continuing directors may act notwithstanding any vacancy in their body; but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

In computing the quorum at a meeting, only those directors qualified to vote are reckoned (*Yuill* v. *Greymouth Point Elizabeth Rly.*, 1904, 1 Ch. 32). It is usual for articles to prohibit directors from voting upon contracts with the company in which they are interested. Table A goes so far as to provide that the office of director shall be vacated where (*inter alia*) a director is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company; the stringency of this provision is tempered by the proviso that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company, if he shall have declared the nature of his interest as required by Section 149 of the Act (see below), but the director shall not vote in respect of any such contract or work, or any matter arising thereout, and if he does so, his vote shall not be counted (Article 72).

It is enacted by Section 149 (to which reference is made in Article 72) that:—

(1) Subject to the provisions of the section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company;

(2) In the case of a proposed contract, the declaration required by the section must be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not, at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested. In a case where the director becomes interested in a contract after it is made, the requisite declaration is to be made at the first meeting of the directors held after the director becomes so interested;

(3) For the purposes of the section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made

with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made;

(4) Any director who fails to comply with the provisions of the section, is liable to a fine not exceeding £100.

It will be seen that this Section does not disqualify a director from voting upon contracts in which he has an interest, but simply requires him to disclose that interest. Such disclosure must be made to a board meeting consisting of directors who are themselves free from any interest in the transaction concerned (*Gluckstein* v. *Barnes*, 1900, A.C. 240), and the nature of the interest must be fully and fairly revealed (*Costa Rica Rly. Co.* v. *Forwood*, 1901, 1 Ch. 746). If there are not sufficient directors to constitute a disinterested quorum, the interest must be disclosed to the company in general meeting and the transaction approved by a resolution of such meeting.

As has been seen, the articles commonly extend the effect of Section 149 and forbid directors to vote on contracts in which they have an interest. At the same time, it should be understood that, unless the articles authorise directors to engage in contracts with the company, the fiduciary duty which they owe to it precludes them from legitimately deriving any personal advantage at all from transactions to which the company is a party.

Articles of association generally authorise directors to be interested in contracts of the company subject to disqualification from voting, and subject also to compliance with the statutory requirements as to disclosure. Licence as to the acquisition or assumption of an interest in contracts is exercisable only within the strict limits of the articles creating that licence (*Toms* v. *Cinema Trust Co.*, 1915, W.N. 29).

Although a director may be (and usually is) prohibited from voting *qua* director at a board meeting on a contract in which he has an interest, he remains entitled to vote in his capacity of shareholder at a general meeting of the company (*North-West Transportation Co.* v. *Beatty*, 1887, 12 A.C. 589). Thus, where a meeting, described in the minutes as a meeting of the board, voted on a contract in which certain of the directors voting had an interest, it was held that as those present comprised all the shareholders of the company, the meeting was to be regarded as a general meeting in respect of which all formalities had been waived (*In re Express Engineering Works Ltd.*, 1920, 1 Ch. 466).

§ 10. **Resolutions and Voting.** The mode of transacting business at a meeting of directors will be regulated by the articles, and, where no provision is made, by the rules generally applicable to assembling bodies. Under Table A, questions arising at any meeting are to be

decided by a majority of votes (Article 81). Apart from specific provision, each director of a company has an equal vote at a meeting of the board. Table A endows the chairman with a second or casting vote (*ibid.*) and empowers the directors as a body to regulate their meetings as they think fit (*ibid.*).

The effect of an interest in contracts of the company on the voting power of a director in relation to such interests has already been considered.

Unless prescribed regulations decree otherwise, directors may deal with business at a board meeting in any order which they deem expedient (*In re Cawley & Co.*, 1889, 42 Ch.D. 209).

§ 11. **Adjournment.** General principles will regulate the adjournment of a board meeting save in so far as the matter is governed by specific provision in the articles. Table A declares that directors may meet together and adjourn as they think fit (Article 81).

§ 12. **Minutes.** There is a statutory obligation on a company where there are directors or managers to cause minutes of all proceedings at meetings of its directors or of its managers to be entered in books kept for that purpose.

Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

Where minutes have been made in accordance with these requirements of the proceedings at any meeting of directors or managers, then until the contrary is proved the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors or managers shall be deemed to be valid (Section 120).

Reference should be made to Chapter XIII, § 8, for a detailed statement of the effect of the provisions quoted.

There is no statutory obligation to keep the minutes of board meetings open for inspection corresponding to the duty which exists in relation to minutes of general meetings.

§ 13. **Effect of Irregularity.** Although the provisions of Section 120 of the *Companies Act* raise a presumption as to the validity of meetings of directors of which minutes have been duly recorded and signed, that presumption may be overborne by direct evidence of irregularity. Where any defect in the constitution of a board meeting or in the proceedings thereat is proved, the result will be to impair the validity of those proceedings. It does not, however, follow that the results of the meeting and matters depending upon decisions taken

thereat will be rendered entirely nugatory. In the first place, it is an established principle that third parties dealing with a company are entitled to assume that internal acts of the company have been done in conformity with its regulations and within the law unless those parties have notice of facts which exhibit or suggest irregularity (*Royal British Bank* v. *Turquand*, 1856, 6 E. & B. 327). The effect of this principle is that the company may be liable to third parties upon matters irregularly transacted through the medium of the directors.

In the second place, Section 143 enacts that the acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Under this provision the acts of a director improperly appointed or not qualified for office will bind the company to persons unaware of the defect in appointment or qualification.

Thirdly, the articles frequently contain a saving clause in terms similar to those of Article 88 of Table A, namely:—

> "All acts done by any meeting of the directors (or of a committee of directors) or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director."

Such a provision gives an explicit protection to strangers dealing with a company; and, in conjunction with Section 143, also to shareholders, though to what extent is doubtful. Under corresponding provisions contained in the *Companies Act* of 1862 it was held that an allotment of shares by directors imperfectly appointed was not effective, and, similarly, that a forfeiture in which unqualified directors concurred was bad (*Tyne Mutual Association* v. *Brown*, 1896, 74 L.T. 283). In other cases, however, where the articles provided for the validation of acts irregularly done by directors, the principle was adopted that so long as the directors *bona fide* believe that they were acting within their competence and powers, the company was bound as regards shareholders as well as third parties; and that, conversely, members of the company were not entitled to set up the irregularity as against the company. In *Southern Counties Deposit Bank* v. *Rider* (1895, 73 L.T. 374) it was held that resolutions passed by a meeting of shareholders convened under the authority of a board meeting at which a quorum was not present were valid and effective; and in *Briton Medical Association* v. *Jones* (1889, 61 L.J. 384), a call made by a meeting of directors irregularly constituted was upheld.

§ 14. **Removal and Exclusion of Director.** A director once appointed may vacate office:—

(i) By the operation of Section 141 of the Act which provides for such vacation where a director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification shares, or if after the expiration of the two months or shorter time prescribed, he ceases at any date to hold his qualification.

(ii) By expiry of the period for which he was appointed.

(iii) In such circumstances as the articles may specify (see e.g., Article 72 of Table A).

(iv) By removal, where power to that end is given by the articles.

A director properly appointed who has not vacated office or become disqualified cannot be excluded from proceedings of the board. Transactions at a meeting to which a director entitled to attend has been refused admission will be void, subject, however, to what has been stated as to the saving of such transactions between the company and third parties and (in some circumstances) shareholders.

A director who is improperly excluded may obtain an injunction from the courts prohibiting further exclusion from meetings which he is entitled to attend (*Pullbrook* v. *Richmond Consolidated Mining Co.*, 1878, 9 Ch.D. 610).

§ 15. **Powers and Delegation.** In so far as the directors are duly invested with powers of management of the affairs of a company, the members in general meeting cannot purport to override decisions of the board which are within the authority and competence of the directors. This principle renders the board immune from what might be an obstructive and defeatist control by the general body of shareholders. It is possible, however, for the articles to provide expressly that, in certain matters, the directors must seek the sanction of a general meeting, or that a resolution of the shareholders may set aside the acts and decisions of the board. Such power can be exercised only in strict compliance with the terms of the articles reserving that power to the members.

Moreover, to the extent to which authority is not, by the constitution of a company, conferred upon its directors, the members in general meeting are competent to act independently of the board. Thus, where the articles provided that "until otherwise determined by a general meeting, the number of directors shall not be less than two nor more than seven," and further that the directors should have power to appoint additional persons to the board, it was held that

the powers of appointing additional directors had not been delegated to the board so as to exclude the inherent power of the company in general meeting to appoint additional directors (*Worcester Corsetry Ltd.* v. *Witting*, 1936, Ch. 640).

It is a rule of universal application that an agent cannot delegate his functions to a sub-agent, *delegatus non potest delegare*. The rule is qualified, however, where the principal authorises such delegation. Hence, although the directors of a company are primarily bound to exercise their functions in person, they may depute their duties to a greater or less extent to other persons where the articles authorise delegation, as, for example, to a managing director. Typical provisions are contained in Table A, the relevant articles of which are as follows:—

> 85. The directors may delegate any of their powers to committees consisting of such members or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.
>
> 86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
>
> 87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

CHAPTER XV

MEETINGS IN WINDING-UP

THE dissolution of a company is normally brought about by winding-up or liquidating its affairs. Three modes of winding-up are provided by Section 156 of the *Companies Act*, namely,

(a) By the court; or
(b) Voluntary; or
(c) Subject to the supervision of the court.

In each form of winding-up the *modus operandi* is essentially the same. The directors are divested of their administrative powers and there is substituted for the board a liquidator or liquidators whose function it is to assume control of the free assets of the company and to realise them as beneficially as circumstances allow. The proceeds of the realisation are applied, after the costs involved have been provided for, in satisfying the claims of creditors and then, if there be any surplus, in restoring to shareholders the capital contributed by them to the company. If, after a full return of capital, there still remains an excess in the hands of the liquidator, it must be distributed *pro rata* amongst the shareholders unless there is some explicit provision otherwise in the constitution of the company (*Re William Metcalfe & Sons Ltd.*, 1933, Ch. 142).

This is the broad outline of the process of winding-up. The process is subject to many intricate and complex rules dictated by considerations of what is equitable and expedient. These considerations are given expression in the *Companies Act* itself (Part V, Sections 156–305), and also in the Winding-up Rules promulgated by the Lord Chancellor with the concurrence of the President of the Board of Trade under the authority of the Act (Section 305). The greater part of these rules and regulations has no direct application to the subject of meetings, but all of them are derived from a common source, namely, the principle that the assets of a company in liquidation should be beneficially realised and the proceeds equitably distributed.

It will be seen that three interests are concerned in the due fulfilment of what this principle requires. First, the creditors of the company who seek satisfaction of their legitimate claims; secondly, the shareholders who desire to avert, so far as they lawfully can, the

imposition upon them of the full burden of liability arising out of their holdings and to recover at least part of their invested capital; and thirdly, the public, which is concerned, for its material advantage, in the maintenance of honest standards of commercial administration.

The creditors and shareholders (or contributories as they are termed for the purposes of winding-up) are protected by the appointment of a liquidator who is disinterested, at any rate so far as there are competing claims between the creditors or contributories themselves, or between creditors on the one hand and contributories on the other. The liquidator's conduct of the winding-up is subjected, moreover, to the control of the creditors, the contributories, the Board of Trade and the Court.

The creditors and contributories are enabled by the *Companies Act* and the Winding-up Rules to influence the course of a liquidation:—

(i) By individual application to the court in certain cases (e.g., under Sections 252 and 192 [5]) resulting in the making of an appropriate judicial order.

(ii) Through a committee of inspection which is representative of creditors and of contributories. Certain powers vested in the liquidator can be properly exercised by him only with the sanction of this committee (if one has been appointed) or of the court (Section 191 [1]).

(iii) By collective decisions at a meeting of creditors or a meeting of contributories as the case may be.

It is a general principle that, in the administration of the assets of a company which is being wound up, the liquidator must have regard to the wishes of creditors and of contributories, so far as is consistent with the requirements of the law, and this principle finds expression in Section 192 (1), which enacts that, subject to the provisions of the Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection. Accordingly, the respective bodies of creditors and contributories must be afforded proper opportunity of manifesting their desires, and provision is made for the convention and conduct of meetings of those bodies in relation to the liquidation of a company.

The regulations of the *Companies Act* and the Winding-up Rules

in this regard vary according to the mode in which a company is being wound up, and it is therefore necessary to investigate separately the provisions appertaining to a:—

(i) Winding-up by the court,
(ii) Winding-up voluntarily, and
(iii) Winding-up subject to supervision, respectively.

It is convenient here to notice the precise connotation of the expression " contributory." The term is wider in its scope than shareholder, for persons who have ceased, when a winding-up commences, to be shareholders may still be contributories, and as such are entitled to certain rights and subject to certain liabilities. Section 158 of the *Companies Act* defines a contributory as any person " liable to contribute to the assets of a company in the event of its being wound up." This must not be taken as including debtors of the company, for their obligations are entirely independent of the event of winding-up; the definition comprises all persons who at the date when a winding-up commences are members of a company, and also those persons who had been members within the year immediately preceding that date (Section 157). A holder of fully paid shares is regarded as a contributory, although no further calls can normally be imposed upon him in the liquidation of the company. In exceptional circumstances, however, the liability to contribute to the assets of a company may fall contingently upon a fully-paid shareholder (*Re Aidall Ltd.*, 1933, Ch. 323; and see Section 59, *Companies Act*, 1929).

§ 1. **Winding-up by the Court.** A company may be wound up by the court if:—

(1) The company has by special resolution resolved that the company be wound up by the court;
(2) Default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
(3) The company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
(4) The number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven;
(5) The company is unable to pay its debts;
(6) The court is of opinion that it is just and equitable that the company should be wound up (Section 168).

Application to the court is by petition which may be presented either by the company or by any creditor or creditors, or contributory or

contributories (Section 170); the right of a contributory to petition is subject to certain qualifications (*ibid.*).

A petition for a winding-up order against a company may be presented to:—

(a) The High Court which has jurisdiction in respect of any company registered in England.

(b) The respective Chancery Courts of the counties palatine of Lancaster and Durham which have concurrent jurisdiction with the High Court in respect of Companies whose registered offices are within the respective counties.

(c) The County Courts (except those in the metropolitan area) where the share capital of the company either paid up or credited as paid up does not exceed ten thousand pounds and its registered office is in the county court district.

(d) The stannaries courts, in respect of cost book mining companies working mines within the stannaries (Section 170).

Where a company is already in voluntary liquidation, the official receiver is also empowered to petition for a winding-up order with a view to the compulsory liquidation of the company's affairs (Section 163).

Where a company desires to present its own petition, a special resolution must first be passed that the company be wound up by order of the court, and the directors must then be authorised to petition on behalf of the company.

Only a shareholder is entitled to petition on the ground of default in delivering the statutory report or in holding the statutory meeting (see p. 102); and the court may:—

(a) Instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and,

(b) Order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default (Section 171).

Where a winding-up order is made by the court on any of the grounds stated in Section 168 certain consequences ensue and, *inter alia*:—

(1) The official receiver becomes, by virtue of his office, the provisional liquidator of the company and continues to act as such until he or another person becomes liquidator and is capable of acting as such;

(2) The official receiver must summon separate meetings of creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver (Section 185 [1, 2]).

(a) FIRST MEETINGS OF CREDITORS AND CONTRIBUTORIES.

The separate meetings of creditors and contributories which the official receiver is required by Section 185 to convene must be held within one month after the date of the winding-up order, or, if a special manager has been appointed, within six weeks. These periods may be extended by the court (R. 119). It would seem that the proceedings at the meetings are not vitiated merely by reason of the fact that they are not physically separate, i.e., where they are held together at the same time and place so long as each body acts independently (*Re Imperial Chemical Industries Ltd.*, 1937, A.C. 707).

(i) Convening Authority.

The dates of the "first meetings," as they are described in the winding-up rules, must be fixed by the official receiver, who is also responsible for summoning them (R. 119).

The official receiver must give notice to the Board of Trade of the dates fixed by him for the first meetings of creditors and contributories. The notice must be gazetted by the Board (R. 120).

(ii) To Whom Notice Given.

Notices of the first meetings must be sent to creditors and contributories respectively, and may be in the prescribed forms. The notices to creditors must state a time within which creditors must lodge their proofs in order to entitle them to vote at the first meeting (R. 122). A proof consists in the process of formally establishing the claim of a creditor against the company. Any documents or vouchers relative to such claim are submitted to the official receiver or liquidator, together with an affidavit supporting the claim (RR. 89–92).

The official receiver is required also to give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories, seven days' notice of the time and place appointed for each meeting. This notice may either be given personally or sent by prepaid post letter, as may be convenient. It is the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver. Failure to attend when required is to be reported to the court by the official receiver (R. 123).

The expression officer includes such persons as the auditor and the secretary of a company. It should be understood that a director or officer is not necessarily a shareholder, and may therefore not be entitled to notice as a contributory.

(iii) Functions and Business.

(A) *Application to Appoint a Liquidator.*

As has been seen, one of the objects for which the first meetings of creditors and contributories are summoned is to determine whether or not an application should be made to the court for appointing a liquidator in place of the official receiver (Section 185). The court may make any appointment and order required to give effect to such determination, and, if there is a difference between the determinations of the creditors and contributories in respect of the appointment of a liquidator, the court decides the difference and makes such order thereon as it thinks fit (*ibid.*).

(B) *Application to Appoint a Committee of Inspection.*

It is provided by Section 198 (1) of the *Companies Act* that when a winding-up order has been made by the court, it shall be the business of the first meetings, apart from deciding whether application should be made to the court for the appointment of a liquidator, to determine:—

(i) Whether or not application be made also for the appointment of a committee of inspection to act with the liquidator, and

(ii) Who are to be members of the committee if appointed.

When a winding-up order has been made by the court in Scotland, the liquidator must summon separate meetings of creditors and contributories for the purpose of determining these matters (Section 198 [2]); but where the winding-up order has been made on the ground that the company is unable to pay its debts, it is not necessary that a meeting of contributories be summoned (*ibid.*).

Where an application is made to the court under these provisions, it may make any appointment or order necessary to give effect to the determinations of the respective meetings. In the event of there being a difference between the results of the meeting of creditors and of the meeting of contributories, it is the duty of the court to decide the difference and to make such order thereon as it thinks fit (*ibid.*). Where, for example, different sets of persons are nominated by the respective meetings for appointment to the committee of inspection, the court may direct the appointment of some, or all, or more of those appointed by the contributories or by the creditors, according to the requirements of the case. As to meetings of the committee and its powers, see pp. 195–197.

The regulations generally applicable to the convention and conduct of meetings of creditors and of contributories in winding-up are considered in detail in § 3 of this Chapter.

(b) COURT MEETINGS.

Section 288 of the *Companies Act* provides as follows:—

(1) The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the Act or the articles.

Meetings convened in pursuance of the powers conferred by this Section are termed " court meetings." They are subject to the general rules as to meetings in liquidation (*infra*, p. 219), with, however, certain modifications and subject to any express directions which the court may give.

Where an order is made by the court rescinding the appointment of a liquidator or removing a liquidator from office, it may order further that meetings shall be held for the purpose of determining whether an application shall be made to the court for another liquidator to be appointed (R. 58 [3]). Similar power exists where a liquidator resigns (R. 165).

(c) LIQUIDATOR'S MEETINGS.

In addition to the first meetings and to court meetings, the liquidator in a winding-up by the court may himself, from time to time, subject to the provisions of the Act and the control of the court, summon, hold and conduct meetings of the creditors and contributories for the purpose of ascertaining their wishes. It is the duty of the liquidator to summon such meetings:—

(i) At such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise, may direct; or

(ii) Whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be (Section 192 [2]; R. 125 [1]).

These meetings are called " liquidator's meetings," and are also governed by the general Rules (§ 3 *infra*).

§ 2. **Voluntary Winding-up.** As its description indicates, a voluntary winding-up is instituted by the voluntary act of the company concerned. The acts and intentions of a company must necessarily receive expression in one or other of the forms of resolution which a company may pass, and it follows that the initial step in the voluntary winding-up of a company's affairs is the passing of a resolution to that end by the members of the company in general meeting.

Which form of resolution will be requisite, i.e., whether a special or an extraordinary or an ordinary resolution, will depend upon the circumstances in which it is sought to wind up the company voluntarily. The special resolution will serve in any case, but its use is, from the point of view of the company, objectionable for this purpose by reason of the minimum period of notice, namely, twenty-one days, which is necessary to enable such a resolution to be passed.

An extraordinary resolution will be effective to put a company into voluntary liquidation wherever an ordinary resolution would suffice, and also where the terms of the resolution state that the company cannot carry on business by reason of its liabilities, so that it is advisable to wind-up. In fact, this is the most common basis for voluntary liquidation.

An ordinary resolution may be employed to institute a voluntary liquidation only where the articles of a company provide that upon the expiration of some given period, or the occurrence of a specified event, or the accomplishment of a designated object the company should be wound up. In such case, an ordinary resolution will suffice if the condition of things prescribed by the articles is satisfied.

Upon the passing of the appropriate resolution, the company is immediately in voluntary liquidation. It is necessary at this stage to distinguish between two forms of voluntary liquidation, namely, a members' voluntary winding-up and a creditors' voluntary winding-up. The distinction between these two processes depends primarily upon the solvency of the company. Where the company is in a position to meet all its external liabilities in full, the creditors have no substantial interest in the administration of the winding-up, since *ex hypothesi* they will receive payment of their claims in full; the persons who have occasion for concern are the shareholders, who will wish to ensure a beneficial liquidation of the company's affairs so as to provide as great a return of capital to members as is possible in the circumstances, together with, in some cases, a proportion of the surplus assets, if any, remaining after the whole of the subscribed capital has been repaid. Accordingly, in such case the creditors are given no share in the control of the administration, which is vested entirely in the hands of a liquidator appointed by and responsible to the

members of the company. On the other hand, where the company is insolvent, because it cannot pay its external liabilities fully, there is little prospect of there being a sufficiency of assets to provide for any return of capital to shareholders. It follows that the paramount interest in the administration lies with the creditors, and the superiority of their claim is recognised by according to them the major control and surveillance of the winding-up of the company's affairs.

In discriminating for this purpose between a solvent and insolvent company, an arbitrary statutory test is applied. The *Companies Act* provides that if the appropriate declaration of solvency has been filed by the directors (or a majority of them where there are more than two) before the notices have been sent out convening the meeting of the company at which the resolution to wind-up is to be proposed, the company is to be deemed to be solvent and the ensuing liquidation will assume the character of a members' voluntary winding-up. The declaration of solvency must state on behalf of the directors or the majority of them that, having made a full inquiry into the affairs of the company, they have formed the opinion that the company will be able to pay all its debts in full within a period not exceeding twelve months from the commencement of the liquidation of the company, that is to say, from the date of the resolution to wind-up voluntarily (Section 230).

Once this declaration has been filed at the time prescribed, that event will indelibly stamp the winding-up which follows as a members' winding-up. In no circumstances can its character be transformed to a creditors' winding-up, since for this purpose the declaration of solvency is conclusive as to the company's ability to meet the whole of its external liabilities. Where, on the other hand, the directors or a majority of them have not filed a declaration of solvency when the notices are being sent out convening the meeting of the company at which the resolution to wind-up is to be proposed, the company is regarded for this purpose as being insolvent and the supervening liquidation will follow the course of a creditors' voluntary winding-up. In order to introduce the creditors into the administration of the liquidation, at the outset, it is provided that the directors of the company shall, when sending out notices convening the meeting of the company already referred to, issue also notices convening a meeting of the creditors of the company to be held on the same day as the meeting of the shareholders or not later than the following day (Section 238). It will be seen that this meeting of creditors contemporaneous with, or separated by not more than a day from, the company's meeting provides the foundation upon which is built the considerable share of the creditors in supervising the conduct of the liquidation.

(1) MEMBERS' VOLUNTARY WINDING-UP.

From the legal aspect, the proceedings begin effectively when the directors or a majority of them sign and file with the Registrar of Companies the declaration of solvency.

(a) **Initial Meeting.**

The filing of this declaration will be followed by the issue of notices calling a meeting of the shareholders. The mode of summoning the meeting must conform with that laid down in the articles of association as to the convention of meetings of the company. Where the resolution to be employed will be either a special or an extraordinary one, the notice of the meeting must specify the character of the projected resolution (*Rennie* v. *Crichton's* [*Strichen*] *Ltd.*, 1927, S.C.L.T. 459). The resolution having been propounded and duly passed, the company is deemed forthwith to be in voluntary liquidation. This is not, of course, to say that its existence in law is abruptly extinguished, for, as we have already seen, the winding-up of a company is but a means whereby its ultimate dissolution will be achieved. That this should be patently clear, it is provided in the *Companies Act* that " the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved."

The resolution having been passed, notice thereof must under penalty be published by advertisement in the *Gazette* within seven days after the passing of the resolution (Section 226). Moreover, a printed copy of the resolution must within fifteen days after its being passed be forwarded to the Registrar of Companies and recorded by him (Section 118). The chairman at the meeting or other officer of the company should for the purpose of verification sign the respective copies of the resolution sent for filing with the registrar and for publication in the *Gazette*. The notice for the *Gazette* must also be signed or otherwise authenticated by a solicitor.

Section 232 of the *Companies Act* enacts as regards a members' voluntary winding-up that:—

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors cease except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

The appointment of the liquidator (or, though exceptionally, the liquidators) is generally made at the meeting at which the resolution

to wind up voluntarily is passed. It may, however, be effected at a subsequent meeting, and will be so made where it is necessary to fill a vacancy.

(b) Annual Meetings.

As a means of control over the liquidator's administration, the *Companies Act* demands that he shall convene, at the end (or so soon thereafter as may be convenient) of each year during which the winding-up continues, a meeting of the members of the company before whom he is required to lay an account of his administration for the preceding year (Section 235). At that meeting, the liquidator can be called upon to explain and justify any part of his administration which the members choose to subject to scrutiny and enquiry. If the liquidator fails to convene such meetings he is liable to a penalty not exceeding £10.

(c) Court Meetings.

The court's power to convene meetings of contributories (or of creditors) conferred by Section 288 of the Act (*supra*, p. 178) extends to a members' voluntary winding-up.

(d) Liquidator's Meetings.

A liquidator in the voluntary winding-up of a company is empowered, *inter alia*, to summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit (Section 248 [1] [e]). Such a meeting will be called where, for example, it is proposed to sell the assets of the company in exchange for shares in another company, when the sanction of a special resolution is necessary (Section 234).

(e) Meeting to Appoint a Liquidator.

Section 233 of the *Companies Act* provides that:—

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors fill the vacancy, and,

(2) For that purpose a general meeting may be convened by any contributory, or, if there were more liquidators than one, by the continuing liquidators.

(f) Final Meeting.

As soon as the affairs of the company are fully wound up, the liquidator is required to make up an account of the winding-up showing how it has been conducted and how the property of the company has been disposed of. He must then call a general meeting of the company

for the purpose of laying the account before it and of giving any requisite explanation (Section 236).

This meeting must be called by advertisement in the *Gazette* specifying the time, place, and object of the meeting and published at least one month before it is held. The copy of the notice sent for publication in the *Gazette* must be signed by the liquidator and attested within one week after the meeting; and the liquidator is required to send to the registrar of companies a copy of the account and to make a return to him of the holding of the meeting and of its date. If the copy is not duly sent or the return is not duly made, the liquidator is liable to a fine not exceeding £5 for every day during which the default continues.

If, however, a quorum is not present at the meeting, the liquidator must make, in lieu of the return already described, a return that the meeting was duly summoned and that no quorum was present.

The registrar then forthwith registers the account and the appropriate return, and on the expiration of three months from the date of such registration the company is deemed to be dissolved.

On the application of the liquidator or of any other person who appears to the court to have an interest in the matter, the court may make an order deferring the date at which the dissolution of the company is to take effect to such time as the court thinks fit (Section 236).

It is appropriate to reiterate here that all meetings of contributories in a voluntary winding-up are governed (save where the contrary is expressly indicated) by the regulations contained in the articles (or the Act) which were operative in relation to the company prior to the commencement of the liquidation. Thus, the articles continue to be effective throughout the course of a voluntary winding-up as to:—

(i) Convention and notice;
(ii) Chairman;
(iii) Voting;
(iv) Proxies;
(v) Poll;
(vi) Minutes;

and other matters relating to the formalities of and procedure at such meetings.

This follows necessarily from the statutory principle already referred to that the corporate state and corporate powers of the company continue, in a voluntary liquidation, until it is dissolved.

(2) CREDITORS' VOLUNTARY WINDING-UP.

The proceedings in this form of liquidation are substantially the same as those in a members' voluntary winding-up of a company.

For the proper protection of the paramount interests of the creditors, however, there is introduced into the proceedings from the outset of the liquidation a direct means whereby the creditors are in a position to exercise a continuous supervision over the liquidator's conduct of the administration of the company's affairs. This means consists in the convention and holding of meetings of creditors whose decisions will influence the course of the winding-up. These meetings of creditors are in addition to the meetings of the company which are held as in a members' voluntary winding-up.

(a) First Meeting of Creditors.

It has already been seen that if at the time when notices are sent out convening a meeting of the shareholders of a company with a view to passing a resolution to wind up voluntarily, no declaration of solvency has been filed, then, as an essential alternative, the directors are compelled to send out notices convening a meeting of the creditors of the company for the same day or the day next following that on which the meeting of the company is held (Section 238 [1]).

(i) Mode of giving Notice.

The directors must cause the notices of the meeting of creditors to be sent to them by post simultaneously with the notices of the meeting of the company. The company is responsible for procuring the advertisement of the notice of the meeting of the creditors once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situated (Section 238 [1, 2]).

It should be realised that the length of the notice given to the creditors is determined by reference to the period of notice required to be given by the articles (or in the case of a special resolution, by the Act) and is either identical with such period or exceeds it by one day.

The directors of the company must appoint one of their number to preside at the first meeting of creditors, and it is the duty of the director appointed to attend the meeting and to preside thereat. Failure to make the appointment or to act in pursuance of it involves the defaulting parties in liability to a fine not exceeding £100 (Section 238 [3, 6]).

(ii) Consideration of Statement of Affairs.

A full statement of the position of the company's affairs together with a list of its creditors and the estimated amount of their claims must be laid before the meeting. The directors are responsible for causing this to be done, and are subject to penalty on default (Section 238 [3, 6]).

(iii) Functions and Business.

The meeting of creditors (as well as the meeting of the company) may nominate a person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company. If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator; and if no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator (Section 239).

It will be noted that whereas in a members' winding-up the company in general meeting may *appoint* a liquidator or liquidators, the two meetings in a creditors' winding-up may each *nominate* a single liquidator, and the appointment is then determined in the manner prescribed by the Section.

(iv) Nomination of Liquidator.

There is a proviso to the effect that where different persons are nominated by the two meetings, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors (*ibid.*).

On the appointment of a liquidator all the powers of the directors cease, except in so far as the committee of inspection, or, if there is no such committee, the creditors, sanction their continuance (Section 241 [2]).

If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, other than a liquidator appointed by or under the direction of the court, the creditors may fill the vacancy (Section 242).

(v) Appointment of Committee of Inspection.

The creditors at the first or any subsequent meeting may, if they think fit appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding-up was passed, or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding five in number (Section 240).

It is provided further that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection. If such a resolution be passed, the persons mentioned therein are not, unless the court otherwise directs, qualified to act as members of the committee.

On an application to the court for directions in this connection, the court may appoint other persons to act as members in place of the persons disqualified by the resolution (*ibid.*). As to the powers and proceedings of the committee see *infra*, pp. 195–197.

(vi) Adjournment of Meeting of Company.

If the meeting of the company at which the resolution for voluntary winding-up is to be proposed is adjourned, and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of creditors takes effect as if it had been passed immediately after the passing of the resolution for winding-up the company (Section 238 [5]).

(b) Annual Meetings.

In the event of a creditors' voluntary winding-up continuing for more than a year, the liquidator is required to summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding-up, and of each succeeding year, or as soon thereafter as may be convenient. The liquidator must lay before the meetings an account of his acts and dealings and of the conduct of the winding-up during the preceding year. If he should default, the maximum penalty is a fine of £10 (Section 244).

(c) Court Meetings.

The court has power under Section 288 of the *Companies Act* (*supra*, p. 178) to convene meetings of creditors or of contributories in a creditors' voluntary winding-up for the purpose of ascertaining their wishes.

(d) Liquidator's Meetings.

The liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purpose he may think fit. Thus, he will require the sanction of a special resolution for a sale of the assets of the company for shares in another company (Section 234), and the sanction of an extraordinary resolution to effect an arrangement with the creditors which will be binding on the company (Section 251).

It would appear also from the combined effect of Section 248 (1) (*b*) and Section 192 (2) that the liquidator can summon meetings of contributories (as distinct from meetings of the company) and also of creditors in order to ascertain their wishes (and see R. 125 [2]).

(e) Final Meetings.

As soon as the affairs of the company are fully wound up, the

liquidator must make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and must then call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and of giving any necessary explanation (Section 245).

Each of these meetings must be called by advertisement in the *Gazette*, specifying the time, place and object thereof and published one month at least before the meeting. The copies of the notices to be gazetted must be signed by the liquidator and attested.

Within one week after the date of the meetings or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator is required to send to the registrar of companies a copy of the account and must make a return of the meetings and of their dates. In the event of default, the liquidator is liable to a penalty of £5 for each day of default.

Where a quorum is not present at either such meeting, the liquidator must instead make a return that the meeting was duly summoned and that no quorum was present.

On receipt of the account and of one or other of the alternative returns in respect of each of the meetings, the registrar must forthwith register them, and on the expiration of three months from such registration the company is deemed to be dissolved (Section 245).

The date on which the dissolution of the company is to take effect may be deferred by order of the court on the application of the liquidator or any other person who appears to the court to be interested.

In a creditors' voluntary winding-up, as well as in a members' winding-up, the corporate state and corporate powers of the company continue until its ultimate dissolution. Meetings of the company in a creditors' liquidation will therefore be subject (except in so far as there is express provision to the contrary) to the regulations which governed meetings of the company immediately prior to the commencement of the winding-up.

The general rules as to the formalities and proceedings of creditors' meetings are dealt with on p. 188 *et seq.*

(3) WINDING-UP SUBJECT TO SUPERVISION.

The winding-up of a company under the supervision of the court is comparatively rare, the interests to be served being more adequately met by one of the other two forms of liquidation. The occasion for seeking a supervision order from the court in connection with the voluntary winding-up of a company is either that the liquidator's

conduct requires surveillance and control, or else that the liquidator himself desires the guidance of the court in the general conduct of the winding-up as a means of protection against liability for misfeasance where the proper disposition of the assets of a company is a matter of difficulty or dubiety.

This form of liquidation remains, in its essential character, a voluntary winding-up, and the general rules as to meetings will, subject to the order of the court, correspond to those already considered in relation to members' liquidations and creditors' liquidations respectively (Section 260).

The courts having jurisdiction to make orders for the winding-up of a company by the court are competent also to make orders for supervision by the court of a voluntary winding-up (Section 257).

§ 3. **General Rules as to Meetings in Winding-up.** It is necessary here to consider only meetings of creditors and contributories in relation to winding-up by the court, and meetings of creditors in relation to a creditors' voluntary winding-up.

The regulations appertaining to such meetings (in so far as they are not prescribed by the *Companies Act* itself) are contained in the Winding-up Rules made pursuant to powers conferred under Section 305.

By Rule 126, except where and so far as the nature of the subject matter or the context may otherwise require, the Rules as to meetings contained in the Winding-up Rules shall apply to:—

(i) First meetings;
(ii) Court meetings;
(iii) Liquidator's meetings of creditors and contributories, and
(iv) Voluntary liquidation meetings.

As to first meetings, however, the Rules take effect subject and without prejudice to any express provisions of the Act (see e.g., Section 238); and as regards court meetings, the Rules are operative subject and without prejudice to any express directions of the court.

"Voluntary liquidation meetings" for the purposes of the Rules comprise:—

(i) Meetings of creditors summoned by the liquidator in a creditors voluntary winding-up;

(ii) Any meeting of creditors which a liquidator or a company is by the Act required to convene, in or immediately before such a voluntary winding-up;

(iii) All meetings convened by a creditor under the Winding-up Rules in a voluntary winding-up (R. 125 [2]).

It is to be observed that meetings of a company in the voluntary winding-up of its affairs are not within the scope of the Rules and are not subject to their application.

The relevant rules are reproduced below against their identifying numbers. The interpolations in square brackets are not part of the Rules, but are inserted for explanation or elucidation.

Summoning of Meetings.

127. (1) The Official Receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the Company's books to be a creditor of the Company notice of the meeting of creditors, and to every person appearing by the Company's books or otherwise to be a contributory of the Company notice of the meeting of contributories.

(2) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the Statement of Affairs of the Company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the Company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under section 242 of the Act the continuing Liquidator or if there is no continuing Liquidator any creditor may summon the meeting.

(4) This Rule shall not apply to meetings under section 238 or section 245 of the Act.

Proof of Notice.

128. A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or creditor, or his solicitor, or the clerk of either of such persons, or as the case may be by some officer of the Company or its solicitor or the clerk of such Company or solicitor, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of Meetings.

129. Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places

or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

Costs of Calling Meetings.

130. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or Liquidator (as the case may be) such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the Company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This Rule shall not apply to meetings under section 238 or 242 of the Act.

Chairman of Meeting.

131. Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him shall be Chairman of the meeting. At every other meeting of creditors or contributories the Chairman shall be such person as the meeting by resolution shall appoint. This Rule shall not apply to meetings under section 238 of the Act.

Ordinary Resolution of Creditors and Contributories.

132. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution [the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the Company. If the majority in value differs from the majority in number, there is no resolution, but the Court inclines to the view of the majority in value (*Bloxwick Iron & Steel Co.*, 1894, W.N. 111)].

Copy of Resolution to be Filed.

133. The Official Receiver or as the case may be the Liquidator shall file with the Registrar [i.e., of the Court having jurisdiction in the winding-up] a copy certified by him of every resolution of a meeting of creditors or contributories in a winding-up by the Court.

Non-Reception of Notice by a Creditor.

134. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Adjournments.

135. The Chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

Quorum.

136. (1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint but so that the day appointed shall be not less than seven or more than twenty-one days from the day from which the meeting was adjourned. Where only one creditor has proved, he or his proxy will constitute a quorum, and this is so even where the Official Receiver is aware that there are other creditors who have not proved [*Re Thomas, ex parte Warner*, 1911, W.N. 123].

Creditors entitled to Vote.

137. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to

him from the Company. In the case of a Court meeting or Liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors. This Rule shall not apply to any creditors or class of creditors who by virtue of the Rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting. [Where a creditor has proved his debt and subsequently assigns it, he remains entitled to vote in respect of it (*Re Baum*, 1880, 13 Ch.D. 424).]

138. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the Company, and against whom a Receiving Order in Bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purpose of voting, but not for the purposes of dividend, to deduct it from his proof.

139. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

140. The Official Receiver or Liquidator may within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

141. The Chairman shall have power to admit or reject a proof

for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

142. For the purpose of voting at any voluntary liquidation meeting a secured creditor shall unless he surrender his security lodge with the Liquidator or where there is no Liquidator at the Registered Office of the Company before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

Minutes.

143. (1) The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the Chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept. [The minutes kept in compliance with this Rule are the only proper record of the proceedings (*Re Radcliffe*, 1875, 10 Ch. 631).]

Proxies.

144. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 116 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other the Chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding Rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

145. Every instrument of proxy shall be in accordance with the prescribed form and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a Commissioner to administer oaths in the Supreme Court.

146. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

147. A creditor or a contributory may give a general proxy to any person.

148. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof:—

(a) For or against the appointment or continuance in office of any specified person as Liquidator or Member of the Committee of Inspection, and;

(b) On all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

149. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

150. A creditor or a contributory in a winding-up by the Court may appoint the Official Receiver or Liquidator and in a voluntary winding-up the Liquidator or if there is no Liquidator the Chairman of a meeting to act as his general or special proxy.

151. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the Company otherwise than as a creditor rateably with the other creditors of the Company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator he may use the said proxies and vote accordingly.

152. (1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case a proxy shall be lodged with the Official Receiver or Liquidator in a winding-up by the Court, with the Company at its Registered Office for a meeting under section 238 of the Act, and with the Liquidator or if there is no Liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding-up not later than four o'clock in the afternoon of

the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

153. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

154. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the creditor before he attached his signature or mark.

§ 4. **Committee of Inspection.** The regulations governing the constitution and proceedings of a committee of inspection appointed in relation to a winding-up by the court are contained in Section 199 of the Act as follows:—

(1) The committee shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors or contributories, or as, in case of difference, may be determined by the court; provided that where in Scotland a winding-up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members

who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories as the case may require, to fill the vacancy, and the meeting may by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

These provisions (other than the first) are made applicable also to a committee of inspection in a creditors' voluntary winding-up (Section 240).

It is further provided by Rule 161 of the Winding-up Rules that no member of a committee of inspection shall, except under and with the sanction of the court, directly or indirectly by himself or any employer, partner, clerk, agent or servant be entitled to derive any profit from any transaction arising out of the winding-up or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets or for any goods supplied by him to the liquidator for, or on account of, the company.

In a winding-up by the court, if it appears to the Board of Trade, or in a voluntary winding-up if it appears to the committee of inspection or to any meeting of creditors or contributories that any profit or payment has been made contrary to the provisions of the Rule, they may disallow such payment or recover such profit as the case may be, on the audit of the liquidator's account or otherwise.

The function of a committee of inspection is to supervise and control the liquidator's administration of the winding-up. This supervision includes giving any necessary sanction to transactions contemplated by the liquidator. In a creditor's voluntary winding-up, the committee of inspection is invested with power to:—

(i) Fix the remuneration of the liquidator (Section 241).

(ii) Sanction a transfer of the assets of a company in exchange for shares in another company (Sections 234, 253).

(iii) Direct the disposal of books in the winding-up.

In a winding-up by the court, the committee may:—

(i) Fix the remuneration of the liquidator unless the court otherwise orders.

(ii) Sanction matters in respect of which sanction is required by Section 191 (1) of the Act.

§ 5. **Stay of Proceedings.** In the case of a winding-up by the court, the court may on the application of the liquidator or the Official Receiver, or any creditor or contributory make an order staying the proceedings either altogether or for a limited time, or such terms and conditions as the court thinks fit (Section 202). The effect of an order for a stay is that the company ceases to be in liquidation, subject to the terms of the order.

It would appear that the court is similarly empowered in the case of a voluntary winding-up (Section 252 [1]) and if, in such a case, an order for a stay is made by the court, a resolution rescinding the original resolution to wind up voluntarily would thereby be rendered effectual in law.

PART IV

MEETINGS OF LOCAL AUTHORITIES

CHAPTER XVI

GENERAL CONSIDERATIONS

IN this part of the book the expression "local authority" is used in the sense defined by Section 305 of the *Local Government Act*, 1933. References to the "Act" or "the Act of 1933," or "the *Local Government Act*," or to a Section where no statute is indicated, are to be understood as referring to that enactment.

§ 1. **Administrative Areas.** Section 1 of the Act provides that, for the purposes of local government,

(a) England and Wales (exclusive of London) shall be divided into administrative counties and county boroughs;

(b) Administrative counties shall be divided into county districts (being either non-county boroughs, urban districts or rural districts) and county boroughs;

(c) County districts shall consist of one or more parishes; and

(d) Every county borough, with respect to the functions which the council of the borough discharge,

shall form a separate administrative area.

It will be observed that London is outside the system co-ordinated by the Act (see also Section 308 [2]), although certain of its provisions apply to the metropolis. Local administration in London and the metropolitan boroughs is, in the main, governed by the *London Government Act*, 1899.

The local government of each of the areas delimited by Section 1 and the First Schedule to the Act is administered by the appropriate local authority.

§ 2. **Meaning of Local Authority.** By Section 305, "local authority" is defined as meaning the council of a county, county borough, county district or rural parish. "County district" includes non-county boroughs, urban districts or rural districts. Local authorities therefore comprise:—

(i) County Councils;
(ii) County borough councils;
(iii) Non-county borough councils;

(iv) Urban district councils;
(v) Rural district councils;
(vi) Parish councils.

It will be noted that a parish meeting is not within the definition of a "local authority."

§ 3. **Constitution of Local Authorities.** The constitution, function and administration of these authorities are subject to:—

(1) Direct statutory regulation; and,

(2) Common Law rules, so far as they are not qualified or excluded by statute; and

(3) The particular provisions of the standing orders affecting any given authority.

It is not within the province of this book to examine the functions of local government authorities. It is sufficient to state that their general function is to provide services for the inhabitants of the areas which they administer. The constitutions of the various authorities set out in § 2 are investigated in the chapters which follow.

§ 4. **Standing Orders.** While the constitution of a local authority is defined by the Act, the rules which exist for the expedient discharge of the functions of such an authority are determined in part by the Act (Section 75 and 3rd Schedule) and in part by the authority itself. The Act lays down that, subject to its provisions, a local authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such orders (3rd Sch., Part V [4]).

It is to be observed that in so far as the Act, either in its main provisions or in the Schedules thereto, regulates the convention and conduct of meetings of local authorities, standing orders cannot make effective provision (see *infra*). The *Third Schedule* to the Act deals with meetings of local authorities as follows:—

Part I	—	County Councils.
Part II	—	Borough Councils.
Part III	—	Urban and Rural District Councils.
Part IV	—	Parish Councils.
Part V	—	General Provisions.
Part VI	—	Parish Meetings.

Standing orders deal with, *inter alia*, the following matters:—

(i) Meetings;
(ii) Notices of motion;

(iii) Amendments;
(iv) Agenda;
(v) Suspension and interruption of debate;
(vi) Voting;
(vii) Adjournment of meeting;
(viii) Rescission of resolutions;
(ix) Suspension of standing orders.

Since the operation of standing orders promulgated by a local authority is expressly made subject to the provisions of the *Local Government Act*, it follows that any standing order inconsistent with or repugnant to the Act itself will be *ultra vires* and void; that is to say, any regulation which contravenes the explicit provisions of the Act itself, or of any other statute not repealed by the Act, will be beyond the power conferred by that Act for the making of regulations in the form of standing orders. Such a regulation is ineffectual in law and is entirely inoperative. Thus, it is laid down by the Act that subject to the provisions of any enactment (including any enactment in the Act) all acts of a local authority, and all questions coming or arising before a local authority, shall be done and decided by a majority of the members of the local authority present and voting thereon at a meeting of the local authority (*Third Schedule*, Part V [1]). Accordingly, any regulation in standing orders purporting to provide a different method for the decision of questions at a meeting of a council will be nugatory, e.g., a standing order prescribing a specific majority. It follows that a standing order may be rescinded or suspended by the decision of a majority at a meeting irrespectively of whether or not express provision is made in standing orders themselves for such rescission or suspension. Notice must, however, be given of the proposed rescission or suspension, unless standing orders dispense with the necessity of such notice (see *Third Schedule*, Part I [2 (5)]). The object of suspending standing orders is to enable emergent business to be dispatched with greater expedition than is possible under the operation of the normal regulations governing the proceedings of a local authority. When the matter which occasioned the suspension has been dealt with, the ordinary rules are restored, either under the terms of the resolution for suspension or by separate motion.

Where a standing order has been revoked, the resolution effecting the revocation may itself be rescinded, in which case the original standing order becomes again operative (*Weir* v. *Fermanagh County Council*, 1913, 2 I.R. 63, at p. 193).

§ 5. **Committees.** In respect of certain of its functions the performance of which cannot be expediently discharged by the council

in full session, a local authority is empowered, and in some cases required, to set up committees for the discharge of those functions.

(a) **Optional Committees.**

(i) The general permissive power of establishing committees is conferred by Section 85 in the following terms:—

> (1) A local authority may appoint a committee for any such general or special purpose as, in the opinion of the local authority, would be better regulated and managed by means of a committee, and may delegate to a committee, so appointed, with or without restrictions or conditions, as they think fit, any functions exercisable by the local authority, except the power of levying or issuing a precept for, a rate, or of borrowing money.
>
> (2) The number of members of a committee appointed under this section, their term of office, and the area, if any, within which the committee is to exercise its authority, shall be fixed by the local authority.

The Section does not authorise the appointment of a committee for any purpose for which the local authority are *authorised or required* to appoint a committee by any other enactment, including any enactment in the Act of 1933 (see e.g., Section 86); i.e., in such cases the constitution and powers of the committee appointed will be governed by the specific provisions of the relevant enactment, and not by the general provisions of Section 85.

(ii) By Section 87, a rural district council may, at a meeting specially convened for the purpose, appoint for any one or more contributory places within their district, a parochial committee. To such a committee there may be delegated, with or without restrictions or conditions, any functions exercisable by the authority within the contributory place or places for which the committee is formed, except the power of levying a rate or borrowing money.

If a rural district council refuse to appoint a parochial committee for a contributory place after receiving a request to that effect from the parish council or parish meeting of a parish, which is wholly or in part comprised in the contributory place, the parish council or parish meeting may petition the Minister of Health, and he may by order direct the council to appoint a parochial committee for that place (Section 87 [3]).

A contributory place is defined by Section 305 as:—

(a) A rural parish no part of which is included in a special drainage district under the *Public Health Act*, 1875;

(b) A special drainage district formed under that Act; and

(c) In the case of a rural parish part of which forms, or is included in, a special drainage district so formed, such part of the parish as is not comprised within that drainage district.

Section 88 enacts further that a rural district council may delegate to a parish council any functions which, under Section 87, may be delegated to a parochial committee, and thereupon that Section shall apply as if the parish council were a parochial committee.

(iii) The parish meeting of a rural parish not having a separate parish council may, subject to any provisions made by a grouping order, appoint a committee for any purpose which, in the opinion of the parish meeting, would be better regulated and managed by means of such a committee. All acts of a committee so appointed must be submitted to the parish meeting for approval (Section 90).

(Reference should be made to Section 45 of the Act as to the grouping of neighbouring parishes in the same county under a common parish council. The county council is empowered by that Section to make a "grouping order" upon the application of the parish meeting.)

(iv) By Section 91, a local authority may concur with any one or more other local authorities in appointing a joint committee of those authorities for any purpose in which they are jointly interested. To such a joint committee there may be delegated, with or without restrictions or conditions, any functions of the local authority relating to the purpose for which the joint committee is formed, except the power of levying or issuing a precept for a rate, or of borrowing money.

The Section does not authorise the appointment of a joint committee for any purpose for which the appointing local authorities are authorised to appoint a joint committee by any other enactment, e.g., by Section 3 of the *Town and Country Planning Act*, 1932.

(b) Imperative Committees.

Section 86 of the Act requires a county council to appoint a finance committee for regulating and controlling the finance of the county.

Subject to the provisions of any enactment relating to any specific statutory committee (e.g., the standing joint committee of the county council and quarter sessions under the *Local Government Act*, 1888, Sections 9 and 30), no costs, debt or liability exceeding £50 may be incurred by a county council except upon a resolution of the council

passed on an estimate submitted by the finance committee (Subsection 2).

Other committees for miscellaneous purposes must be set up under various enactments, e.g., under the *Housing & Town Planning Act*, 1909, Section 71 (housing committee). For information as to the constitution of the various committees, reference should be made to Chapter XX.

§ 6. **Members of Local Authorities.** Persons are elected to office as members of the local authorities enumerated above in accordance with the provisions of the Act. The mode of election will be considered, as regards each particular authority, in its proper context, but it is here convenient to consider the rules as to qualification and disqualification for holding office which have general application.

(1) Qualifications for Office.

A person is qualified to be elected and to be a member of a local authority if:—

(i) He is not disqualified by the Act or some other enactment; and

(ii) He is of full age; and

(iii) He is a British subject; and

(iv) He (*a*) is a local government elector for the area of the local authority; or

(*b*) owns freehold or leasehold land within the area of the local authority; or

(*c*) has during the whole of the twelve months preceding the day of election resided in the area of the local authority; or

(*d*) has, in the case of a member of a parish council, either during the whole of the twelve months preceding the day of election or since the 25th March in the year preceding the year of election resided either in the parish or within three miles thereof (Section 57).

(2) Re-election.

A person ceasing to hold any office to which he is elected under the Act is, unless not qualified or disqualified, eligible for re-election (Section 58).

(3) Disqualifications for Office.

By Section 59, and subject to its provisions, a person is disqualified for being elected a member of a local authority if he:—

(a) Holds any paid office or other place of profit (other than that of mayor, chairman or sheriff) in the gift or disposal of the local

authority or of any committee thereof (this disqualification operates even though the payment or profit is not actually received); it includes also a paid office held under a joint committee, and in the case of an urban district council the disqualification applies to employment, e.g., as a roadman, by that council, notwithstanding that the wages are reimbursed by the county council [*Rex* v. *Davies, ex parte Penn*, 1932, 96 S.P. 416]; or

(b) Is a person who has been adjudged bankrupt, or made a composition or arrangement with his creditors; or

(c) Has within twelve months before the day of election or since his election received poor relief (even though given on condition of the performance of labour [*Masarill* v. *Whitehaven*, 1885, 16 Q.B.D. 242]); or

(d) Has within five years before the day of election or since his election been surcharged to an amount exceeding £500 by a district auditor; or

(e) Has within five years before the day of election or since his election been convicted of any offence and ordered to be imprisoned for a period of not less than three months without the option of a fine; or

(f) Is disqualified for being elected under any enactment relating to corrupt or illegal practices; or

(g) In the case of the council of a borough is an elective auditor of the borough; or

(h) In the case of the council of a county or county borough, is a paid officer engaged in the administration of the laws relating to the relief of the poor, or, having been such a paid officer, has been dismissed from his office within five years before the day of election under the provisions of any enactment relating to the relief of the poor (Section 59 [1]).

These disqualifying regulations are subject to the following provisos:—

(i) A person shall not be disqualified for being elected or being a member of a county council by reason only of his holding the office of a county returning officer for that county, unless he has directly or indirectly, by himself or his partner, received any profit or remuneration in respect of that office.

(ii) The disqualification resulting from bankruptcy ceases:—

(a) Upon annulment of the order of adjudication on the ground that it ought not to have been made or that the debts have been paid in full;

(b) Upon discharge with a certificate that the bankruptcy was caused by misfortune;

(c) In any other case upon the expiration of five years from the date of discharge.

(iii) The disqualification attaching to a person by reason of his having made a composition or arrangement with his creditors ceases:—

(a) If he pays his debts in full, on the date on which the payment is completed;

(b) In any other case, on the expiration of five years from the date on which the terms of the deed of composition or arrangement are fulfilled.

(iv) A person shall not be deemed to have received poor relief merely because he, or a member of his family, has received medical or surgical treatment, or been an inmate of an institution for the purpose of receiving such treatment, or received relief which could have been granted under the *Blind Persons Act*, 1920.

(v) Under (d) and (e) of the disqualifications, the ordinary date on which the period allowed for making an appeal or application with respect to the surcharge or conviction expires, or, if such an appeal or application is made, the date on which the appeal or application is disposed of, or is abandoned, or fails because it is not prosecuted, shall be deemed to be the date of the surcharge or conviction as the case may be.

Section 59 enacts further that:—

(1) A paid officer of a local authority who is employed under the direction of a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other local authority, shall be disqualified for being elected or being a member of that other local authority.

(2) The recorder of a borough cannot be elected to the council thereof.

(3) The coroner for a county or a borough or his deputy cannot be elected to the council of that county or borough.

(4) Teachers in a school maintained but not provided by a local education authority shall be in the same position as respects disqualification for office as members of the authority, as if they were teachers in a school provided by the authority.

(4) Vacation of Office.

If a member of a local authority fails throughout a period of six consecutive months to attend any meeting of the local authority he

shall, unless the failure was due to some reason approved by the local authority, cease to be a member of that authority (Section 63).

It is provided, however, that:—

(a) Attendance as a member at a meeting of any committee or sub-committee of the local authority, or at a meeting of any joint committee, joint board or other body to which any of the functions of the local authority have been delegated or transferred, shall be deemed to be attendance at a meeting of the local authority.

(b) Members of any branch of His Majesty's forces on active service or persons in the employment of the Crown in war or any emergency do not cease to be members of a local authority by reason only of failure to attend meetings if the failure is due to that service, or to that employment where, in the latter case, the situation is such as, in the opinion of the Minister of Health, entitles the employee to relief from disqualification (*ibid.*).

By Sub-section 2, if the mayor of a borough is continuously absent from the borough, except in the case of illness, for a period exceeding two months, he shall, as from the expiration of that period, cease to hold office (and see *infra* as to date of vacation of office).

In applying these rules the relevant period is to be reckoned from the first meeting at which the officer concerned is absent (*Kershaw* v. *Shoreditch Corporation*, 1906, 95 L.T. 55).

(5) Resignation.

A person elected to any office under the Act may at any time resign his office by writing signed by him and delivered:—

(a) In the case of a member of a county council, to the clerk of the county council;

(b) In the case of a person elected to a corporate office in a borough to the town clerk;

(c) In the case of a member of a district council to the clerk of the council;

(d) In the case of a parish councillor, to the chairman of the parish council; and

(e) In the case of a chairman of a parish council or of a parish meeting, to the parish council or parish meeting, as the case may be (Section 62).

It is also provided that the resignation, "shall take effect upon the receipt of the notice of resignation by the person or body to whom it is required to be delivered." A notice of resignation once given cannot be effectively withdrawn, for it is given an inextinguishable statutory operation by the words last quoted from Section 62.

(6) Casual Vacancies.

For the purpose of filling a casual vacancy in any office for which an election is held under the Act, the date on which the vacancy is deemed to have occurred is in the cases respectively of:—

(a) Non-acceptance of office by any person who is required to make and deliver a declaration of acceptance of office, upon the expiration of the period fixed by the Act for the delivery of the declaration.

(b) Resignation, upon receipt of the notice of resignation by the person or body to whom the notice is required to be delivered.

(c) Death, upon the date of death.

(d) Disqualification, by reason of a surcharge or conviction upon the expiration of the period allowed for appeal, or upon the final disposition or failure by non-prosecution of the appeal.

(e) An election being declared void on an election petition, upon the date of the report or certificate of the election court.

(f) A person ceasing to be qualified, or becoming disqualified for a reason other than those already mentioned or from failure to attend meetings or, in the case of the mayor of a borough, by reason of absence from the borough, upon the date on which his office declared to have been vacated either by the High Court or by the council as the case may be. (See next paragraph.)

(g) A county councillor accepting the office of county alderman, or of a councillor of a borough accepting the office of alderman of the borough, upon the date when he accepts that office (Section 65).

(7) Filling of Casual Vacancy.

On a casual vacancy occurring in the office of chairman of a county council or county alderman or of mayor or alderman of a borough, or of chairman of a district council or parish council, an election to fill the vacancy must be held not later than the next ordinary meeting (see Chapter XVII) of the council held after the date on which the vacancy occurs, or, if that meeting is held within fourteen days after that date, then not later than the next following ordinary meeting of the council, and shall be conducted in the same manner as an ordinary election.

Where the office vacant is that of chairman of a county council, or of mayor, or of chairman of a district council or parish council, a meeting of the council for the election may be convened by the clerk of the authority.

In a rural parish not having a separate parish council, a casual vacancy in the office of chairman of the parish meeting is filled by the parish meeting, a meeting of which must be forthwith convened for the purpose of filling the vacancy (Section 60).

(8) Declaration of Vacancy.

Where a member of a local authority:—

(a) Ceases to be qualified to be a member of the authority; or

(b) Becomes disqualified for being a member of the authority for any reason other than by reason of a surcharge, or of a conviction, or of a breach of any enactment relating to corrupt or illegal practices; or

(c) Ceases to be a member of the authority or to hold the office of mayor of a borough by reason of failure to attend meetings of the local authority or by reason of absence from the borough as the case may be,

the local authority shall, except in any case in which a declaration has been made by the High Court under Section 84 of the Act (see *infra*), forthwith declare his office to be vacant and signify the vacancy by notice signed by the clerk of the authority and affixed to the offices of the authority (Section 64).

(9) Judicial Proceedings on Disqualification.

Proceedings may be instituted, either in the High Court or in a court of summary jurisdiction, against any person acting as a member of a local authority, or as a mayor of a borough, on the ground of his being disqualified for so acting.

Proceedings may also be instituted on the same ground in the High Court against any person claiming to be entitled to act as a member of a local authority or as a mayor of a borough.

Such proceedings must be commenced by the expiration of six months from the date on which person whose qualification is challenged acted as member or mayor as the case may be (Section 84).

Where, in proceedings under the Section cited, it is proved that the defendant has acted as alleged while disqualified then:—

(a) In proceedings in the High Court, the court has power:—

(i) To make a declaration to that effect and to declare that the office in which the defendant has acted is vacant;

(ii) To grant an injunction restraining the defendant from so acting;

(iii) To order that the defendant shall forfeit to His Majesty such sum as the court think fit, not exceeding £50 for each occasion on which he so acted while disqualified.

(b) In proceedings in a court of summary jurisdiction, the court

has power on conviction to impose a fine not exceeding £50 for each occasion on which the defendant acted as an officer while disqualified (*ibid.*, Sub-section 2).

Proceedings commenced in a court of summary jurisdiction may be discontinued in certain circumstances to enable those proceedings to be re-instituted in the High Court (*ibid.*, Sub-section 3).

In the case where proceedings are taken on the ground that the defendant claims to act as a member of a local authority or as the mayor of a borough and is disqualified from so acting, the court has power, upon proof of the allegations:—

(i) To make a declaration to that effect; and

(ii) To declare that the office in which the defendant claims to be entitled to act is vacant; and

(iii) To grant an injunction to restrain the defendant from so acting (*ibid.*, Sub-section 4).

Only a local government elector in the area of the local authority concerned is entitled to take proceedings under these provisions (*ibid.*, Sub-section 5).

(10) Disqualifications for Voting.

Section 76 enacts that if a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in consideration or discussion of, or vote on any question with respect to, the contract or other matter.

This provision does not apply to an interest in a contract which a member may have as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

For the purposes of the Section, a person shall be treated as having indirectly a pecuniary interest in a contract or other matter, if:—

(a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

(b) he is a partner, or is in the employment, of a person with whom

the contract is made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration (*ibid.*, Sub-section 2).

It is, however, provided that:—

(i) Sub-section 2 shall not apply to membership of, or employment under, any public body;

(ii) A member of a company or other body shall not, by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or body (e.g., where he holds the shares or stock as trustee or personal representative).

For the purposes of the Section, where married persons are living together, an interest of one spouse, if known to the other, shall be deemed also to be an interest of the other spouse.

A general notice given in writing to the clerk of the authority by a member thereof to the effect that he or his spouse is a member, or in the employment, of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, is deemed, unless and until the notice is withdrawn, to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body or to that person, which may be the subject of consideration after the date of the notice. Such disclosure must be recorded by the clerk of the authority in a book kept for that purpose. The book must be kept open at all reasonable hours for inspection by any member of the local authority (Sub-sections 4, 5). Failure to make the disclosure where required renders the person in default liable to penalties unless he proves that he did not know that a contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at the meeting.

Where, in consequence of these provisions, so great a proportion of the whole number of members of a local authority is disabled at any one time as to impede the transaction of business, then the county council in the case of a parish council, or the Minister of Health in the case of any other local authority, may, subject to such considerations as they respectively think fit, remove any disability imposed by Section 76. Similar powers are conferred upon a county council or the Minister of Health, as the case may be, in any other circumstances in which it appears to the county council or the Minister that it is in the interests of the inhabitants of the area that the disability should be removed (Sub-section 8).

It is further enacted that a local authority may by standing orders

provide for the exclusion of a member of the authority from a meeting of the authority whilst any contract, proposed contract or other matter in which he has such an interest as defined in the Section is under consideration.

§ 7. **Admission of Press to Meetings.** This is dealt with on pp. 36–7, to which reference should be made.

CHAPTER XVII

COUNTY COUNCILS

EVERY administrative county (which is not necessarily coterminous with a geographical county) must establish a county council which has the powers and functions created by the Act or otherwise (Section 2).

§ 1. **Constitution of County Councils.** A county council is a body corporate by the name of the county council with the addition of the name of the administrative county. It is endowed with perpetual succession and a common seal and the power to hold land for the purposes of its constitution without licence in mortmain (Section 2 [2]). The council consists of:—

(a) The Chairman,
(b) County Aldermen,
(c) County Councillors.

§ 2. **Office and Election of Chairman.** The chairman of a county council must be elected annually by the county council from among the county aldermen or county councillors or persons qualified to be county aldermen or county councillors. He continues in office, unless he resigns or ceases to be qualified or becomes disqualified, until his successor becomes entitled to act as chairman (Section 3 [1, 2]). No person can act in the office of chairman unless and until he has made a declaration of acceptance of office in the form prescribed by the Secretary of State and delivered such declaration to the clerk of the council within two months from the day of the election (Section 61). If the declaration is not made and delivered within the appointed time, the office of the person elected becomes vacant (*ibid.*) and a fresh election must take place (Section 66). Pending the result of that election the retiring chairman continues to act (*supra*).

Section 3 further provides that, during his term of office, the chairman shall continue to be a member of the council notwithstanding the provisions of the Act relating to the retirement of county councillors at the end of three years (Sub-section 3, and see § 5). A county council may pay to the chairman such remuneration as they think reasonable (*ibid.*, Sub-section 4).

Under Section 4, the election of the chairman is required to be the first business transacted at the annual meeting of a county council. An outgoing county alderman is not entitled at such election to vote as alderman. Where there is an equality of votes on the election, the person presiding is entitled to a casting vote whether or not he was entitled to vote in the first instance (*ibid.*), e.g., even though he is an outgoing alderman. The person presiding will be the chairman for the preceding year (Section 3).

Subject to his taking the requisite oaths, the chairman of a council is *virtute officii* a justice of the peace (*ibid.*).

§ 3. **Appointment of Vice-Chairman.** A county council must appoint a member of the council to be its vice-chairman.

Unless he resigns or ceases to be qualified or becomes disqualified, the vice-chairman holds office until immediately after the election of a chairman at the next annual meeting of the council. During that time he continues to be a member of the council notwithstanding the provisions of the Act relating to the retirement of county councillors at the end of three years (see § 5).

Subject to any standing orders made by the county council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman, except that he shall not, as vice-chairman, act as a justice of the peace (Section 5). He may, of course, act as a justice by virtue of specific appointment to that office.

§ 4. **Office and Election of County Aldermen.** These are elected by the county council from among the county councillors or persons qualified to be county councillors.

The number of county aldermen must be one-third of the whole number of county councillors, or, if that number is not divisible by three, one-third of the highest number below that number which is divisible by three.

If a county councillor is elected to and accepts the office of county alderman, his office of county councillor thereupon becomes vacant.

In every third year in which county councillors are elected, one half, as near as may be, of the whole number of county aldermen (being those who have been county aldermen for the longest time without re-election) retire *immediately after* the election of the new county aldermen. The places of the retiring aldermen are filled by the newly-elected county aldermen, who come into office on the same day (Section 6).

Although an outgoing alderman remains in office until his successor

is elected, he cannot, as alderman, vote in the election of the chairman (§ 2, *supra*), or on the election of county aldermen (*infra*).

The ordinary election of county aldermen is to be held in every third year, being the year in which county councillors are elected (§ 5 *infra*), at the annual meeting of the county council, and shall take place immediately after the election of the chairman.

A county alderman may not, as such, vote at the election of a county alderman.

Every person entitled to vote may vote for any number of persons, not exceeding the number of vacancies to be filled, by signing and delivering at the meeting to the person presiding thereat a voting paper containing the full names and places of residence and descriptions of the persons for whom he votes.

The chairman at the meeting, as soon as all the voting papers have been delivered to him, must openly produce and read them or cause them to be read, and then deliver them to the clerk of the county council to be kept for six months. *In re Barnes Corporation, ex parte Hutter*, 1933, 31 L.G.R. 111, where prior to the election meeting it had been decided by the council that the voting papers should not themselves be read, but only the names of candidates for whom votes were cast, and this procedure was followed at the election, the election was void and a mandamus was issued for a new election.

In the case of an equality of votes, the chairman at the meeting, whether or not entitled to vote in the first instance, may exercise a casting vote.

The chairman must declare elected as many persons as there are vacancies to be filled, being the persons who have the greatest number of votes (Section 7).

§ 5. **Office and Election of County Councillors.** The county councillors are elected by the local government electors for the county (see *The Representation of the People Act*, 1918). Their term of office is three years, and they retire together in every third year on the 8th March, their places being filled by the newly-elected committees, who come into office on the same day. The mode of election and the determination of the electoral divisions are governed by Sections 10 to 16 of the *Local Government Act*.

§ 6. **Meetings of County Councils.** A county council must in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business.

(a) ANNUAL MEETING.

The annual meeting must be held:—

(i) In a year which is the year of election of county councillors, on the 16th March or such other day within fourteen days after the 8th March as the county council may fix; and

(ii) In any other year on such day in the months of March, April or May as the county council may fix.

The meeting must be held at such hour as the council may fix, or, if no hour is fixed, at twelve noon (3rd Sch. Pt. I).

As to (i), where the last day of the fourteen days after the 8th March is a Sunday, Good Friday, bank holiday or a day appointed for public thanksgiving or mourning, the period is extended to the first day thereafter which is not one of the days mentioned (Section 295).

(b) OTHER MEETINGS.

The other meetings must be held at such hour and on such other days before the 8th March next following as the county council at the annual meeting decide or by standing order determine [3rd Sch. Pt. 1 (1)]. There must be at least three such other meetings, but there may be more if occasion requires.

(1) Place of Meeting.

Meetings of a county council shall be held at such place, either within or without the county, as the council may direct (*ibid.*).

(2) Convention.

The chairman of a county council may call a meeting of the council at any time.

Any five members of the council may, by writing signed by them, present a requisition to the chairman for the calling of a meeting. If the chairman refuses so to do, or, without so refusing, does not call a meeting within seven days (note here Section 295) after the presentation of the requisition, then any five members (not necessarily the requisitionists) may, on such refusal or on the expiration of seven days, as the case may be, forthwith call a meeting of the council (*ibid.* [2]).

(3) Notice.

At least three clear days before a meeting of a county council:—

(a) Notice of time and place of the intended meeting must be published at the offices of the council. Where the meeting is called by members of the council, the notice must be signed by those members and must specify the business proposed to be transacted thereat.

(b) In addition to the publication of such notice, a summons to attend the meeting, specifying the business to be transacted thereat

and signed by the clerk of the county council, must be left at, or sent by post to, the usual place of residence of every member of the council.

It is expressly provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

The notice of a meeting of a county council at which a resolution for the payment of a sum out of the county fund (otherwise than for ordinary periodical payments), or a resolution for incurring any costs, debt or liability exceeding £50, will be proposed, must state the amount of the sum, costs, debt or liability and the purposes for which the payment is to be made or the liability incurred.

No business can be transacted at a meeting of the council save:—

(i) Business specified in the summons relating thereto; and,

(ii) In the case of the annual meeting, business which the Act requires to be transacted thereat, e.g., the election of chairman of the council under Section 4.

(4) Chairman.

The chairman of the council, if present at a meeting of a county council, must preside thereat.

If the chairman is absent, the vice-chairman of the council, if present, must preside.

If both the chairman and vice-chairman of the council are absent from a meeting of the council, a county alderman or, if they are all absent, a county councillor chosen by the members present, presides at the meeting (*ibid.* [3]).

(5) Quorum.

A quorum at a meeting of a county council consists in the personal presence of at least one-fourth of the whole number of members of the council (*ibid.* [4]). If, however, more than one-third of the members become disqualified at the same time, then until the number of members in office is increased to not less than two-thirds of the whole number of members, the quorum is to be determined by reference to the number of members remaining qualified, instead of by reference to the entire number (3rd Sch. Pt. V [6]). The "whole number" includes vacant offices (*Newhaven Local Board* v. *Newhaven School Board*, 1885, 30 Ch. D. 350).

(6) Resolutions and Voting.

Subject to the provisions of the Act or any other enactment, all acts of a county council and all questions coming or arising before it "shall be done and decided by a majority of the members present and voting thereon at a meeting."

The language here quoted from the *Third Schedule* appears to make the decision of all questions within the competence of a county council subject absolutely to the will and decision of a duly constituted meeting of the council (see also Chapter XVI, § 4).

It will be observed that a majority of the votes actually exercised will be effective; a majority of the voting power present is not necessary.

In the case of an equality of votes the person presiding at the meeting may exercise a second or casting vote (3rd Sch. Pt. V [1]; and see p. 79).

Only votes of persons qualified to vote may be counted. Reference should be made to the preceding chapter for the disqualifications from voting which apply generally. Section 75 provides also that a county councillor elected for an electoral division consisting wholly of a county district or of some part of a county district shall not vote on any matter involving only expenditure on account of which the district is not, for the time being, liable to be charged.

It will be recalled also that an outgoing alderman cannot, as alderman, vote at the election of a chairman (Section 4 [2]).

The general rules of debate, notices of motions and of amendments will be dealt with by standing orders.

(7) Adjournment.

No express provision is made as to adjournment, and this will be governed by the regulations (if any) under standing orders or by general rules (as to which, see Part II of this book).

(8) Minutes.

Minutes of the proceedings of a meeting must be drawn up and entered in a book kept for that purpose. The minutes must be drawn up and entered in a book kept for that purpose and signed at the same or next ensuing meeting by the person presiding thereat.

A minute purporting to be so signed must be received in evidence without further proof (3rd Sch. Pt. V [3]).

Until the contrary is proved, a meeting of which a minute has been made and signed as required by the Act is deemed to have been duly convened and held, and all the members present at the meeting are deemed to have been duly qualified (*ibid.*).

The names of the members present at a meeting must be recorded (*ibid.* [2]).

(9) Effect of Irregularity.

The proceedings of a county council are not invalidated by any vacancy among their number, or by any defect in the election or qualification of any member (*ibid.* [5]).

CHAPTER XVIII

BOROUGH COUNCILS

THE body corporate constituted by the incorporation of the inhabitants of a borough is termed a municipal corporation (Section 305).

By Section 17 of the *Local Government Act* the municipal corporation of a borough shall be capable of acting by the council of the borough and shall:—

(a) In the case of a borough being a city, the mayor of which is entitled to bear the title of lord mayor, bear the name of the lord mayor, aldermen and citizens of the city;

(b) In the case of any other borough being a city, bear the name of the mayor, aldermen and citizens of the city; and

(c) In the case of any other borough, bear the name of the mayor, aldermen and burgesses of the borough.

The municipal corporation of a borough is empowered to hold land for the purpose of their constitution without licence in mortmain.

§ 1. **Constitution of Borough Councils.** The council of a borough consists of the mayor, aldermen and councillors, and is empowered to exercise all such functions as are vested in the municipal corporation of the borough by the Act or otherwise.

§ 2. **Office and Election of Mayor.** The mayor is elected annually by the council of the borough from among the aldermen or councillors of the borough or persons qualified to be aldermen or councillors of the borough. The mayoral term of office is one year, but the mayor continues in office, unless he resigns or ceases to be qualified or becomes disqualified, until his successor becomes entitled to act as mayor. During his term of office, the mayor continues to be a member of the council notwithstanding the provisions of Section 23 (see § 5) relating to the retirement of councillors of a borough every three years.

The mayor has precedence in all places in the borough and is *virtute officii* a justice of the peace for the borough, and in the case of a non-county borough, also for the county in which the borough is situate (Section 18).

The election of the mayor is made the first business of the annual meeting of the council by Section 19. An outgoing alderman is not

entitled, as alderman, to vote at the election of the mayor. In the case of an equality of votes, the person presiding at the meeting, whether or not entitled to vote in the first instance, may exercise a casting vote (*ibid.*).

§ 3. **Appointment of Deputy Mayor.** The mayor may appoint an alderman or councillor of the borough to be deputy mayor. The person so appointed holds office, unless he resigns or ceases to be qualified or becomes disqualified, until a newly-elected mayor becomes entitled to act as mayor.

The appointment of a deputy mayor must be signified in writing to the council and recorded in the minutes of the council.

If for any reason the mayor is unable to act, or the office of mayor is vacant, the deputy mayor may discharge all functions which the mayor as such might discharge. He cannot, however, take the chair at a meeting of the council unless specially appointed by the meeting to do so; and he cannot, as deputy mayor, act as a justice of the peace (Section 20).

§ 4. **Office and Election of Aldermen.** The aldermen of a borough are elected by the council of the borough from among the councillors or persons qualified to be councillors of the borough.

The number of aldermen must be one-third of the whole number of councillors. A councillor elected to and who accepts the office of alderman thereupon vacates his office of councillor.

The term of office of an alderman of a borough is six years. In every third year, one-half, as near as may be, of the whole number of aldermen, being those who have been aldermen for the longest time without re-election, must retire immediately after the election of the new aldermen who come into office on the same day, i.e., the day of their election (Section 21).

The ordinary election of aldermen is held in every third year at the annual meeting of the council, and takes place immediately after the election of the mayor, or if there is a sheriff, after the appointment of the sheriff. An alderman cannot, as such, vote at the election of an alderman of the borough.

Every person who is entitled to vote may vote for any number of persons not exceeding the number of vacancies to be filled, by signing and delivering at the meeting to the person presiding thereat a voting paper containing the full names and places of residence and descriptions of the persons for whom he votes.

As soon as all the voting papers have been delivered to the chairman at the meeting, he must openly produce and read them or cause them

to be read. They must then be delivered to the town clerk and kept by him for six months.

In the case of an equality of votes the person presiding at the meeting has a casting vote, whether or not he was entitled to vote in the first instance.

As many persons as there are vacancies to be filled, being the persons who have the greatest number of votes, must be declared by the presiding officer to be elected (Section 22).

§ 5. **Office and Election of Councillors.** The councillors of a borough are elected by the local government electors for the borough (see *The Representation of the People Act*, 1918). Their term of office is three years. One-third of the whole number of councillors of the borough, or of each ward thereof, as the case may be, being those who have been councillors for the longest time without re-election, must retire in every year on the 1st November, and their places must be filled by the newly-elected councillors, who come into office on that day.

The ordinary day of election of councillors is the 1st November (Section 23). The mode of election and the division of boroughs into wards is governed by Sections 24 to 30 of the Act.

§ 6. **Meetings of Borough Councils.** The council of a borough must in every year hold an annual meeting and at least three other meetings which shall be, as near as may be, at regular intervals for the transaction of general business.

(a) ANNUAL MEETING.

The annual meeting must be held at twelve noon, or at such other hour as the council may from time to time determine, on the 9th of November in each year (3rd Sch. Pt. II).

(b) OTHER MEETINGS.

The other meetings must be held at such hour and on such other days before the 1st November next following the annual meeting or the Council at that meeting decide or by standing order determine (*ibid.*). It is a matter of discretion as to how often the council meet apart from the annual meeting so long as there are not less than three such meetings.

(1) Convention.

The mayor may call a meeting of the council at any time.

A requisition for the calling of a meeting signed by five members, or by one-fourth of the whole number of members, of the council, whichever is the less, may be presented to the mayor. If he then

refuses to call a meeting, or if, without so refusing, he does not call a meeting within seven days after such requisition has been presented to him, any five members, or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council (*ibid.* [2]).

(2) Notice.

Three clear days at least before a meeting of the council of a borough:—

(a) Notice of the time and place of the intended meeting must be published at the town hall, and, where the meeting is called by members of the council, the notice must specify the business proposed to be transacted thereat.

(b) A summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk must be left or sent by post to the usual place of residence of every member of the council.

There is an express saving for the case where the summons is not duly served, it being provided that want of service of the summons on any member of the council shall not affect the validity of a meeting (*ibid.*).

No business can be transacted at a meeting of a borough council other than:—

(i) Business specified in the summons relating thereto; and,

(ii) In the case of the annual meeting, business which the Act requires to be transacted thereat, e.g., the election of the mayor under Section 19.

(3) Chairman.

The mayor, if present, presides at a meeting of the council of a borough. If the mayor is absent, the deputy mayor, if chosen for that purpose by the members of the council then present, takes the chair.

Where both the mayor and deputy mayor are absent from a meeting of the council, or the deputy mayor is not chosen, such alderman, or in the absence of all the aldermen, such councillor, as the members of the council present may choose acts as presiding officer (3rd Sch. Pt. II).

(4) Quorum.

A quorum at a meeting of a borough council consists normally in the personal presence of at least one-third of the whole number of

members of the council; but where more than one-third of the members are contemporaneously disqualified, then, until the number of members is increased to not less than two-thirds of the whole number, the quorum is determined by reference to the number of members remaining qualified.

(5) Resolutions; Votes; Adjournments; Minutes.

The regulations which govern the proceedings of a borough council in relation to these matters are identical with those which apply in the case of a county council, save as to the provisions of Section 75 of the Act as to voting on certain expenditures.

Reference should accordingly be made to the preceding chapter as to these matters.

(6) Effect of Irregularity.

The proceedings of a borough council are not invalidated by any vacancy among their number, or by any defect in the election or qualification of any member (3rd Sch. Pt. V).

CHAPTER XIX

DISTRICT COUNCILS

IT has been seen (Chapter XVI) that county districts comprise, apart from non-county boroughs, urban districts and rural districts.

Every urban district, and with some qualification each rural district, is administered by its own " district council."

An urban or a rural district council is a body corporate with perpetual succession and a common seal and power to hold land for the purposes of their constitution without licence in mortmain.

§ 1. **Constitution of District Councils.** The district council of an urban or rural district consists of the chairman and councillors, and is invested with the functions created by the Act or otherwise (Sections 31, 32).

§ 2. **Office and Election of Chairman.** The chairman of a district council is elected annually from among the councillors or persons qualified to be councillors of the district. The election of the chairman must be the first business of the annual meeting of the council.

Unless he resigns or ceases to be qualified or becomes disqualified, the chairman continues in office until his successor becomes entitled to act as chairman.

During his term of office he continues to be a member of the council, notwithstanding the provisions of Section 35 (*infra*) which require the retirement of district councillors at the end of three years.

The chairman is by virtue of his office a justice of the peace for the county or for each county in which the district is wholly or in part situate, subject to the taking of the necessary oaths (Section 33).

§ 3. **Appointment of Vice-Chairman.** A district council may appoint a member of the council to be vice-chairman of the council. The vice-chairman holds office, unless he resigns or ceases to be qualified or becomes disqualified, until immediately after the election of a chairman at the next annual meeting. During that time he continues to be a member of the council notwithstanding the provisions of Section 35 (*infra*).

Subject to any standing orders made by the district council, anything authorised or required to be done by, to or before the chairman,

may be done by, to or before the vice-chairman; but he cannot as vice-chairman, act as a justice of the peace (Section 34).

§ 4. **Office and Election of District Councillors.** The councillors of urban and of rural district councils are respectively called " urban district councillors " and " rural district councillors."

Councillors for each district are elected by the local government electors (see *Representation of the People Act*, 1918) in the manner provided by the *Local Government Act*, 1933. Their term of office is three years.

One-third as near as may be of the whole number of councillors of the district, or in the case of an urban district divided into wards of each ward, being those who have been district councillors for the longest time without re-election, must retire in every year on the 15th April. Their places are filled by the newly-elected councillors, who come into office on the same day.

This is subject to the proviso that where a county council, on request made by a resolution of a district council passed by not less than two-thirds of the members voting on the resolution, consider that it would be expedient to provide for the simultaneous retirement of the whole of the members of that district council, they may by order give directions to that effect. Where an order giving such directions has been made, the members of that district council must retire together on the 15th April in every third year.

An order to this effect may be rescinded by the county council on request by the district council made by similar resolution to the request seeking the making of the order. The rescission must provide for all matters necessary or proper for giving effect thereto and, in particular, must require all the councillors of the district at the date of the rescinding order to retire together on the 15th April next following that date, and their places to be filled by the newly-elected councillors.

A county council may, for the purpose of regulating the retirement of rural district councillors, in cases where they retire by thirds, and in order that, as near as may be, one-third of the councillors of the rural district shall retire in each year, direct in which year or years of each triennial period the councillors for each electoral area in the district shall retire (Section 35).

The mode of election of district councillors and the electoral divisions to which they are elected are regulated by Sections 37 to 42 of the Act. By the last of those Sections, where the number of councillors of a rural district is less than five, the Minister of Health is empowered to make orders from time to time nominating as members of the district council such number of persons as may be necessary to make up the number of councillors to five.

§ 5. **Meetings of District Councils.** A district council must in every year hold an annual meeting and at least three other meetings for the transaction of general business. The annual meeting of the council is held on, or as soon as conveniently may be after, the 15th April in every year (3rd Sch. Pt. III).

(1) Place of Meeting.

A meeting of a council must not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

(2) Convention.

The chairman of the council may call a meeting of the council at any time.

If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members or by one-fourth of the whole members of the council, whichever is the less, has been presented to him, or if without so refusing he does not call a meeting within seven days after the requisition has been presented to him, any five members, or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Notice.

Three clear days at least before a meeting of the council:—

(a) Notice of the time and place of the intended meeting must be published at the offices of the council, and where the meeting is called by members of the council, the notice must be signed by those members and must specify the business proposed to be transacted.

(b) A summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the clerk of the council, must be left or sent by post to the usual place of residence of every member of the council.

Want of service of the summons or any member of the council does not affect the validity of a meeting.

(4) Chairman.

The chairman of the council, if present, must preside at meetings of the council.

If the chairman is absent, then the vice-chairman, if present, must preside.

Where both are absent, the chair is taken at a meeting of the council by a councillor chosen by the members present.

(5) Quorum.

No business can be transacted at a meeting of the council unless at least one-third of the whole number of members of the council are present (3rd Sch. Pt. III); but where, and so long as, more than one-third of the members are disqualified at the same time, the quorum is determined by reference to the number of members who remain qualified (*ibid.*, Pt. V).

In no case, however, can a larger quorum than seven members be required.

(6) Attendance of Inspectors.

An inspector appointed by the Minister of Health may attend any meeting of the council as and when directed by the Minister. The inspector may take part in the proceedings of the meeting, but may not vote.

(7) Mode of Voting.

The mode of voting at meetings of the council must be by show of hands. On the requisition of any member of the council, the voting on any question must be recorded, so as to show whether each member present and voting gave his vote for or against that question.

(8) Resolutions : Votes ; Adjournment ; Minutes.

As regards these matters, the rules correspond to those applying in the case of a county council (see Chapter XVII) that the provisions of Section 75 apply only to county councils, while the form of resolution referred to in § 4 of this chapter is peculiar to the matters there discussed. Moreover, the rules as to the mode and recording of voting under the last sub-paragraph are imperatively applicable to district councils alone, though other local authorities may by standing order adopt them.

(9) Effect of Irregularity.

Here also the position corresponds to that in the case of county and borough councils (*q.v.*).

CHAPTER XX

PARISH COUNCILS

By Section 43 of the *Local Government Act*, it is enacted that for every rural parish there shall be a parish meeting, and subject to the provisions of the Act, for every rural parish or group of parishes having a parish council immediately before the commencement of the Act, there shall continue to be a parish council.

The same Section makes provision for the establishment of parish councils in certain cases; Sections 44 and 45 deal with the dissolution of parish councils and with the grouping of parishes and the separation of a parish from a group.

§ 1. **Constitution and Powers of Parish Council.** A parish council consists of the chairman and parish councillors, and has the functions vested in the council by the Act or otherwise (Section 48).

The parish council is a body corporate with perpetual succession and power to hold land for the purposes of their constitution without licence in mortmain.

Acts of a parish council may be signified by an instrument under the hands of, or in the case of an instrument under seal under the hands and seals of, two members of the council. Any instrument purporting to have been so executed shall, until the contrary is proved, be deemed to have been so executed (*ibid.*).

§ 2. **Office and Election of Chairman.** The chairman of a parish council must be elected annually by the council from among the councillors or persons qualified to be councillors of the parish.

The election of the chairman must be the first business transacted by the annual meeting of the council, and the elected chairman continues in office, unless he resigns or ceases to be qualified or becomes disqualified, until his successor is elected (Section 49).

During his term of office the chairman continues to be a member of the council notwithstanding the provisions of Section 50 of the Act relating to the retirement of parish councillors at the end of three years (*ibid.*).

§ 3. **Appointment of Vice-Chairman.** The parish council may appoint a member of the council to be vice-chairman of the council.

Unless he resigns or ceases to be qualified or becomes disqualified, the vice-chairman holds office until immediately after the election of a chairman at the next annual meeting of the council. During that time he continues to be a member of the council.

Subject to any standing orders made by the parish council, anything authorised or required to be done by, to or before the chairman, may be done by, to or before the vice-chairman (*ibid.*).

§ 4. **Parish Councillors.** The number of parish councillors for each parish or group of parishes is such number, not being less than five nor more than fifteen, as may be fixed from time to time by the county council.

The term of office of parish councillors is three years. They retire together on the 15th April in every third year, reckoned from 1937. Their places are filled by the newly-elected councillors who come into office on the same day.

The mode of election of parish councillors and the division of wards are governed by Sections 52 to 55 of the Act.

§ 5. **Meetings of Parish Council.** A parish council must in every year hold an annual meeting and at least three other meetings. The annual meeting is held on or within fourteen days after the 15th April in every year.

A meeting of a parish council must be open to the public unless the council directs otherwise. The meeting is not to be held in premises licensed for the sale of intoxicating liquor except in cases where no other suitable room is available for the meeting, either free of charge or at a reasonable cost.

(1) **Convention.**

The first meeting of a parish council constituted after the commencement of the Act must be convened by the chairman of the parish meeting at which the first parish councillors are nominated.

In other cases, the chairman of a parish council may call a meeting of the council at any time.

If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by two members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any two members of the council on that refusal or on the expiration of these seven days, as the case may be, may forthwith convene a meeting of the council (3rd Sch. Pt. IV).

(2) Notice.

Three clear days at least before a meeting of a parish council:—

(a) Notice of the time and place of the intended meeting must be affixed in some conspicuous place in the parish. Where the meeting is called by members of the council, the notice must be signed by them and specify the proposed business of the meeting.

(b) A summons to attend the meeting specifying the business to be transacted and signed by the clerk of the council must be left at, or sent by post to, the usual place of residence of every member of the council. Want of service of the summons on any member does not affect the validity of a meeting (3rd Sch., Pt. IV).

(3) Chairman.

At a meeting of a parish council the chairman of the council, if present, must preside.

If the chairman is absent, the vice-chairman, if present, must preside.

Where both chairman and vice-chairman are absent, such councillor as the members present may choose acts as chairman of the meeting.

(4) Quorum.

The quorum at a meeting of a parish council consists in the presence of at least one-third of the whole number of members of the council; but where and so long as more than one-third of the members are disqualified at the same time, the quorum is determined by reference to the number of members who remain qualified.

In no case, however, can a quorum be less than three members.

(5) Mode of Voting.

Voting is by show of hands. On the requisition of any member the voting on any question must be recorded so as to show whether each member present and voting gave his vote for or against that question.

(6) Resolutions; Votes; Adjournment; Minutes.

The same rules apply as in the case of a county council (other than the provisions of Section 75) and subject to the preceding sub-paragraph (see Chapter XVII).

(7) Effect of Irregularity.

Here also the position corresponds to that which obtains in the case of county or borough councils (*q.v.*).

CHAPTER XXI

PARISH MEETING: COMMITTEES

THE establishment of a parish meeting for every rural parish under Section 43 of the Act has already been referred to (see introduction to Chapter XX). The nature and functions of the parish meeting are here considered.

§ 1. **Constitution and Powers of Parish Meeting.** The parish meeting of a rural parish consists of the local government electors for the parish.

Any act of a parish meeting may be signified by an instrument under the hands, or, if an instrument under seal is required, under the hands and seals, of the person presiding at the meeting and two other local government electors present thereat. An instrument purporting to have been so executed shall, until the contrary is proved, be deemed to have been so executed (Section 47).

In a rural parish not having a separate parish council, the chairman of the parish meeting and the councillor or councillors for the time being representing the parish on the rural district council, are constituted by the Act a body corporate with perpetual succession and power to hold land for the purpose of the parish without licence in mortmain (*ibid.*).

Where the parish is represented on the rural district council by one councillor only, and that councillor is also the chairman of the parish meeting, the rural district council shall appoint a local government elector for the parish to be a member of the representative body of the parish.

That body must, in all respects, act in the manner directed by the parish meeting (*ibid.*).

§ 2. **Election of Chairman.** The parish meeting, in the case of a rural parish not having a separate council, must at their annual assembly choose a chairman for the year, who is to continue in office until his successor is elected (Section 49 [8]). This is subject to any provisions of a grouping order.

§ 3. **Conduct of Parish Meeting.** The parish meeting of a rural parish must assemble annually on some day between the 1st March and the 1st April, both inclusive, in each year.

Subject to this, parish meetings are held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting; provided, however, that in a rural parish not having a separate parish council, the parish meeting shall assemble at least twice a year, this being subject to any requirements of a grouping order.

The proceedings at a parish meeting must not commence before six o'clock in the evening.

A parish meeting must not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost (3rd Sch. Pt. VI).

(1) Chairman at Parish Meeting.

If the chairman of a parish council is present at a parish meeting, and is not a candidate for election thereat, he must preside at the meeting.

In a rural parish not having a separate parish council, the chairman of the parish meeting presides over all assemblies of the parish meeting at which he is present.

If the chairman of the parish council or the chairman of the parish meeting, as the case may be, is absent from or unable to take the chair at an assembly of the parish meeting, the meeting may appoint a person to take the chair. A person so appointed is invested with the powers and authority of the chairman (3rd Sch. Pt. VI).

(2) Convention.

A parish meeting may be convened by:—

(a) The chairman of the parish council; or

(b) Any two parish councillors; or

(c) In the case of a parish not having a parish council, the chairman of the parish meeting, or any person representing the parish on the rural district council; or

(d) Any six local government electors for the parish.

(3) Notice.

Not less than seven clear days before a parish meeting, public notice thereof must be given specifying the time and place of the intended meeting and the business to be transacted thereat. The notice must be signed by the convener or conveners of the meeting. The duration of notice must be not less than fourteen days where the establishment or dissolution of a parish council or the grouping of the parish with another parish is to be considered.

Public notice of a parish meeting is given:—

(a) By affixing the notice to or near the principal door of each church or chapel in the parish; and

(b) By posting the notice in some conspicuous place or places in the parish; and

(c) In such other manner, if any, as appears to the persons convening the meeting to be desirable for giving publicity to the notice.

(4) Determination of Questions.

At a parish meeting, or at a poll consequent on such meeting, each local government elector may give one vote and no more on any question (3rd Sch. Pt. VI).

In the first instance, a question to be decided by a parish meeting must be determined by the majority of those present at the meeting and voting thereon. The decision of the person presiding as to the result of the voting is final unless a poll is demanded.

Wherever there is an equality of votes, the person presiding at a parish meeting has a second or casting vote (*ibid.*).

A poll may be demanded on any question arising at a parish meeting before it is brought to its conclusion. Unless the chairman consents to the taking of a poll, it must be demanded by not less than five, or one-third, of the local government electors present at the meeting, whichever is the less (*ibid.*).

The taking of a poll consequent upon a parish meeting must be by ballot in accordance with rules promulgated by the Section of State under Section 54 of the Act of 1933. The provisions of that Section, subject to the adaptation made by those rules, apply in the case of a poll so taken as if it were a poll for the election of parish councillors (see *Parish Councillors Election Rules*, 1934 [S.R. & O. 1934, No. 1318]).

Where a parish meeting is required or authorised to be held (see e.g., Section 89 as to appointment of a committee for part of a parish) then:—

(a) The persons entitled to attend and vote at the meeting, or to vote at any poll consequent thereon, are the local government electors registered in respect of qualifications in that parish ward or part of the parish; and,

(b) The provisions of the Act with respect to parish meetings for the whole of the parish, including the provisions with respect to the convening of a parish meeting by local government electors, shall apply *mutatis mutandis*, as if the parish ward or part of the parish were the whole parish (Section 78).

(5) Minutes.

Minutes of the proceedings of a parish meeting, or of a committee thereof, must be drawn up and signed at the same or the next ensuing assembly of the parish meeting, as the case may be, by the person presiding thereat. Any minute purporting to be so signed must be received in evidence without further proof.

Until the contrary is proved, a parish meeting, or meeting of a committee thereof, in respect of the proceedings of which a minute has been duly made and signed, is deemed to have been duly convened and held, and the persons present thereat are deemed to have been duly qualified. In the case of proceedings of a committee, the committee is deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes (3rd Sch. Pt. VI [6]).

(6) Standing Orders.

Subject to the provisions of the Act, a parish council may make, vary and revoke standing orders for the regulation of the proceedings and business at parish meetings for the parish. In a rural parish not having a separate parish council, the parish meeting may, subject to the provisions of the Act, regulate their own proceedings and business (*ibid.*, Pt. VI [7]).

§ 4. **Committees of Local Authorities.** The powers of a local authority to set up committees to which certain of the functions of the authority may or are required to be delegated has been referred to in Chapter XVI. It remains to consider the constitution of committees set up by virtue of such powers.

(1) Appointed under General Power.

Where a committee is appointed in pursuance of the provisions of Section 85 (1) of the *Local Government Act*, the number of the members, their term of office and the area, if any, within which the committee is to exercise its authority, are fixed by the local authority.

Such a committee may include persons who are not members of the local authority, so long as at least two-thirds of the members are members of the appointing authority.

Every member of a committee appointed under the Section who was, at the time of his appointment, a member of the appointing authority ceases to be a member of the committee when he ceases to be a member of the authority. This is subject to the qualification that a member of a local authority is not to be deemed to have ceased by reason of retirement to be a member of the authority if he has been re-elected a member of it not later than the day of his retirement.

(2) Finance Committees of County Councils.

The statutory finance committee which a county council must appoint under Section 86 consists of such number of members of the council as the council think fit. The term of office of this committee is also fixed by the appointing council.

(3) Parochial Committees.

A committee appointed under Section 87 (1) for a contributory place within the area of a rural district consists either wholly of members of the district council, or partly of such members and partly of local government electors for such contributory place, as the council may determine. Where a parochial committee consists partly of members of the district council and partly of other persons, those other persons must, as regards a contributory place which consists of a parish having a separate parish council, be, or be selected from, members of the parish council.

(4) Committees for Parts of Rural Parishes.

These consist of members of the parish council appointing the committee, and of other persons representing the part of the parish in respect of which the appointment was made (Section 89).

(5) Committees of Parish Meetings.

A committee established by a parish meeting in a rural parish not having a separate parish council, is appointed from amongst local government electors for the parish (Section 90).

(6) Joint Committees.

Where a local authority concurs in the appointment of a joint committee for the discharge of any functions which under any enactment the authority is authorised or required to discharge through a committee appointed under that enactment, and that enactment contains special provisions with respect to the constitution and functions of that committee (including any provisions with respect to the appointment of persons who are not members of the local authority), those provisions shall apply to the constitution and functions of the joint committee with such modifications as the case may require (Section 91).

Subject to what has been stated, the number of members of a joint committee appointed under the Section cited, and their term of office, and the area, if any, within which the joint committee is to exercise its authority, are fixed by the appointing authorities.

A member of a joint committee who when appointed was a member of the appointing authority, ceases to be a member of the committee when he ceases to be a member of that authority; but a member

of a local authority is not, for this purpose, regarded as having ceased to be a member of the authority if, having retired, he is re-elected not later than the day of his retirement (*ibid.*).

(7) Joint Committees for Parts of Parishes.

Where a parish council can be required to appoint a committee (see Section 89, *supra*) consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee. A requirement to this effect must be complied with by the parish councils concerned at the time of the appointment (Section 92).

(8) General Provisions.

Subject to any specific provisions in the Act to the contrary, certain general rules, arising out of the Act and the 3rd Schedule thereto are made applicable at large to committees of local authorities. These are set out below.

(i) Disqualifications for Membership.

A person who is disqualified under Section 59 of the Act (see Chapter XVI) for being elected or being a member of a local authority is disqualified for being a member of a committee or sub-committee of that authority, or for representing it on a joint committee. The provisions of Section 84 (see Chapter XVI) as to judicial proceedings in respect of qualification apply also to members of committees (Section 94). It is, however, provided that a person shall not be disqualified for being a member of certain committees concerned with education merely by reason of being a teacher or holding office at a school or college which is aided, provided or maintained by the local authority appointing the committee (*ibid.*).

(ii) Disability for Voting.

Section 76 of the Act (see Chapter XVI) applies to members of a committee or sub-committee of any local authority or of any joint committee appointed by agreement between local authorities in the same way as it applies to members of local authorities with the following modifications:—

(a) As respects members of a committee or sub-committee, references to meetings of the committee or sub-committee are to be substituted for references to meetings of the local authority; and the right of persons who are members of the committee or sub-committee but not members of the local authority to inspect the book to be kept under that Section is limited to an inspection of the entries in the book relating to members of the committee or sub-committee; and

(b) As respects members of a joint committee, references to meetings of the joint committee are to be substituted for references to meetings of the local authority, and references to the clerk to the joint committee for references to the clerk of the authority (Section 95).

(iii) Standing Orders.

A local authority appointing a committee, and local authorities concurring in appointing a joint committee, may make, vary and revoke standing orders respecting the quorum, proceedings and place of meeting of the committee or joint committee, but subject to any such standing orders the quorum, proceedings and place of meeting shall be such as the committee or joint committee may decide (Section 96 [1]).

The person presiding at a meeting of a committee or joint committee has a second or casting vote.

(iv) Minutes.

Minutes of a meeting of a committee of a local authority must be drawn up and entered in a book kept for that purpose, and must be signed at the same or next ensuing meeting of the committee by the person presiding. A minute purporting to be signed so must be received in evidence without further proof.

Until the contrary is proved, a meeting in respect of the proceedings of which a minute has been so made and signed, is deemed to have been duly convened and held and the members thereat to have been duly qualified, and the assembling committee to have been duly constituted and to have had power to deal with the matters referred to in the minutes (3rd Sch. Pt. V [3]).

(v) Effect of Irregularity.

The proceedings of a committee of a local authority are not invalidated by any vacancy among their number, or by any defect in the election or qualification of any member (*ibid.* [5]).

PART V

MEETINGS OF MISCELLANEOUS BODIES

CHAPTER XXII

STATUTORY COMPANIES

AN incorporated company whose entity is founded directly upon the provisions of a statute is termed a statutory company such as, e.g., the London and North-Eastern Railway Co.

§ 1. **The Special Act.** The Act of Parliament which creates a statutory company is called its " Special Act," and the powers and attributes of such a company will be determined by the provisions of the special Act. The object of creating a company by specific statutory enactment is to confer upon the projected company extraordinary legal powers not derivable from incorporation under the *Companies Act*, 1929, or some other general Act. A railway company, for example, must be invested with the power to acquire land compulsorily (subject, of course, to payment of appropriate compensation), and this power is conferred by the special Act (which may be amended or extended by subsequent Acts) under which any particular railway company is incorporated.

It is important to observe that since the special Act of a statutory company is itself an Act of Parliament, its provisions will have the force of statutory enactment and cannot be challenged on the ground of illegality. Accordingly, any regulations which may be expressly contained in or prescribed by a special Act will be operative in relation to the company incorporated by such Act. This is recognised by the *Companies Consolidation Act*, 1845, which lays down that wherever the word " prescribed " is used in that Act in reference to any matter, that word is to be construed to refer to such matter " as the same shall be prescribed or provided for in the special Act " (*Companies Clauses Consolidation Act*, 1845, Section 2).

A statutory company is required at all times after the expiration of six months after the passing of the special Act, to keep at its principal office of business a copy of the special Act, printed by the printers to His Majesty, or some of them. Where the company's undertaking is a railway, canal, or the like, the works of which are not confined to one town or place, the company must also, within the stipulated six months, deposit in the office of each of the clerks of the peace of the several counties into which the works extend, and in the office of the

town clerk of every borough or city into which or within one mile of which the works extend, a copy of its special Act (*ibid.*, Section 161). The said clerks of the peace or town clerks must receive, and they and the company respectively must retain, the said copies of the special Act, and must, under penalty, permit all persons interested to inspect such copies and to make extracts therefrom or take copies thereof (*ibid.*).

If the company fails to keep or deposit as required copies of its special Act, it is liable to a penalty of £20 for each offence and a penalty of £5 for each day after the first during which the default continues (*ibid.*, Section 162).

§ 2. **General Regulations.** To obviate the necessity of inserting in the special Acts of all individual statutory companies appropriate regulations for their general administration, the legislature has enacted certain general statutes, styled collectively the *Companies Clauses Consolidation Acts*, whose provisions apply to all statutory companies within the operation of these Acts, save in so far as the special Act of any given company excludes or modifies their application. The principal of these Acts is the *Companies Clauses Consolidation Act*, 1845, and references in this chapter to " the Act " or " the Act of 1845 " or to a Section where no Act is cited are to be understood as referring to that enactment. This Act is amended as to some of its provisions by the *Companies Clauses Consolidation Act*, 1888, which is referred to in this chapter as " the amending Act " or " the Act of 1888."

§ 3. **Application of the Consolidation Acts.** It is provided by Section 1 of the principal Act that " this Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed, be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, shall, save so far as they shall be expressly varied or excepted by any such Act, apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively." The Act of 1888 is, by Section 1 thereof, made part of the principal Act, and has accordingly the same application.

The effect of these provisions is that the *Companies Clauses Consolidation Acts* apply to all companies incorporated by special Act save as varied or excepted by that Act.

In this chapter the word " company " is used in the sense defined above and does not, therefore, include a company incorporated under a general Act, such as the *Companies Act*, 1929.

§ 4. **Shareholders in Statutory Companies.** By Section 8 of the Act, every person who has subscribed the prescribed sum or upwards to the capital of a company, or has otherwise become entitled to a share in the company, and whose name has been entered on the register of shareholders is deemed to be a shareholder of the company.

Section 9 requires every company to keep a book to be called the "Register of Shareholders." There must be entered in this book, from time to time, the names of the several corporations and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders are respectively entitled. Each share must be distinguished by its number, and the book must be authenticated by the affixing of the common seal at the first ordinary, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company (*ibid.*). A "Shareholders' Address Book" must be kept also in which the secretary is required to record in alphabetical order the corporate names and places of business of corporate shareholders, and the names, residences and descriptions of individual shareholders (Section 10).

§ 5. **Meetings of Statutory Companies.** The meetings which may be held in connection with the administration of a statutory company are:—

(i) Ordinary general meetings;
(ii) Extraordinary general meetings;
(iii) Directors' meetings;
(iv) Meetings prescribed by the special Act, e.g., class meetings.

The last-mentioned class is not subject to general statutory rules and is not provided for in the *Companies Clauses Consolidation Acts*. Each of the other classes is governed by the provisions of these Acts so far as, in relation to any given company, provision is not made by its special Act.

§ 6. **Ordinary Meetings.** The first general meeting of the shareholders must be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special Act. Subsequent general meetings must be held at the prescribed periods. If no period is fixed by the special Act, such meetings must be held in the months of February and August in each year, or at such other stated periods as may be appointed for that purpose by an order of a general meeting (Section 66). Meetings so appointed to be held are called, under the Act, "Ordinary Meetings" (*ibid.*).

(1) Place of Meeting.

Ordinary meetings must be held in the prescribed place, or, if no place be prescribed, then at some place to be appointed by the directors (Section 66).

(2) Convention.

Fourteen days' public notice at the least must be given of an ordinary meeting. The notice must be by advertisement specifying the place, the day and the hour of meeting. Where any business is to be transacted other than that appointed by the special Act for ordinary meetings or not included in the business of such meetings by the Act of 1845, the notice must specify the purpose for which the meeting is called (Section 71).

A notice required to be given by advertisement must be advertised in the prescribed newspaper, or, if no newspaper be prescribed, or if the prescribed newspaper has ceased publication, in a newspaper circulating in the district in which the company's principal place of business is situated (Section 138).

Unless notices are required to be served personally, any notice which by the company's constitution is required to be served upon shareholders (*cf.* Section 71) may be served by post in a letter directed according to the registered address or other known address of the shareholder (Section 136). The notice must be sent so as to admit of its being delivered within the period (if any) prescribed for the giving of such notice (*ibid.*). In proving due service it is sufficient to prove that the notice was properly directed and was put into the post office as required by the Section.

Every notice requiring authentication by a company may be signed by two directors, or by the treasurer or secretary of the company, and need not be under the common seal of the company. A notice may be in writing or in print, or partly in writing and partly in print (Section 139). Where notice is to be given to joint holders of a share or shares, a notice given to that one of the joint shareholders who is named first in the register of shareholders is sufficient notice to all the proprietors of the share or shares jointly held (Section 137).

(3) Chairman.

At every meeting of a company one or other of the following persons must preside as chairman, namely,

(a) The chairman of the directors, or, if absent,

(b) The deputy chairman (if any) or, if absent,

(c) One of the directors of the company to be chosen for the purpose by the meeting, or, if there be no directors present,

(d) A shareholder to be chosen for that purpose by a majority of the shareholders present at the meeting (Section 73).

(4) Quorum.

The quorum at an ordinary meeting will be as prescribed by the special Act. If no quorum is so prescribed it must consist in shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every £500 of that proportion of the capital, unless the number so computed exceeds twenty, in which case twenty shareholders holding not less than one-twentieth of the capital of the company shall be the quorum (Section 72).

If within one hour from the time appointed for a meeting the required quorum is not present, no business shall be transacted other than the declaring of a dividend (if that be one of the objects of the meeting) and, save for that purpose, the meeting shall be held to be adjourned *sine die* (*ibid.*; but see § 9 as to a meeting for the election of directors).

(5) Business.

The Act provides that no matters, except such as are appointed by the Act or the special Act to be done at an ordinary meeting, shall be transacted at such meeting, unless special notice of such matters has been given by the advertisement convening the meeting (Section 67).

It is further provided that the shareholders present at any meeting shall proceed in the execution of the powers of the company with respect to, and only with respect to, the matters for which it was convened (Section 74).

The directors are required at each ordinary general meeting to produce to the shareholders a balance sheet showing the company's assets and liabilities as at the prescribed date, or, if no date be prescribed, at a date fourteen days at least before such meeting. The balance sheet must be accompanied by a report of the auditors thereon (Sections 108, 116 and 118).

Previously to every ordinary meeting at which a dividend is intended to be declared, the directors must cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary general meeting at which a dividend was declared, and the apportionment of such dividend among the shareholders. The scheme must be exhibited at the ordinary meeting at which it is intended to declare the dividend, and it is for the meeting, if it so wills, to make the declaration (Section 120).

(6) Adjournment.

An ordinary meeting may adjourn from time to time and from place to place. No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place (*ibid.*).

(7) Voting.

At all general meetings of a company every shareholder is entitled to vote according to the prescribed scale of voting, and where no scale is prescribed, every shareholder has one vote for every share up to ten, and an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares (Section 75). This determination of the voting power of a shareholder is, however, subject to the proviso that no shareholder shall be entitled to vote at any meeting unless he has paid all the calls then due on the shares held by him (*ibid.*).

Votes may be given either personally or by proxies who are shareholders.

Every proposition at a meeting is to be determined by a majority of votes of the parties present, including proxies. The chairman of the meeting is entitled to vote not only as a principal and proxy, but may exercise a casting vote if there is an equality of votes (Section 76).

A lunatic or idiot shareholder may vote by his committee; and an infant shareholder by his guardian or any one of his guardians. Such vicarious votes may be given in person or by proxy (Section 79).

(8) Poll.

Voting is, in the first instance, upon a show of hands. A poll may be demanded by such number or proportion of the shareholders as may be fixed by the special Act. If no provision in that regard is made, the Common Law rule prevails (see Part II).

(9) Proxies.

The Act authorises voting by proxy (Section 76). A proxy must be given in writing in the form set out in Schedule F to the Act or in some equivalent form. It must bear the signature of the shareholder nominating the proxy, or the common seal of a corporate shareholder (Section 76).

A proxy can be given only to a person who is himself a shareholder in the company (*ibid.*), except where the appointor is a body corporate, in which case the proxy may be given to a member of that body although he is not a shareholder in the company (*Companies Clauses Consolidation Act*, 1888, Section 2).

In the case of a corporate shareholder, the form of proxy is prescribed by Section 4 of the Act of 1888; it is provided, moreover, that the donee of such a proxy shall, during the continuance of his appointment, be taken to be a shareholder in the company to which his appointment relates, holding the number of shares held by the corporation by whom he is appointed, for all purposes except the transfer of any such share or the giving receipts for any dividend thereon (*ibid.*, Section 3).

No person may vote by proxy unless the instrument appointing the proxy has been transmitted to the secretary of the company within the prescribed period, or, if no period is prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which the proxy is to be used (Section 77).

(10) Minutes.

The directors of a company must cause minutes of the orders and proceedings of all meetings of the company to be duly entered in books to be kept from time to time provided for the purpose which are to be kept under the superintendence of the directors (Section 98). It is further provided that every entry shall be signed by the chairman of the meeting. An entry so signed is evidence in all courts, and before all judges, justices and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of a committee respectively, or of the signature of the chairman, or of the fact of his having been the chairman, all of which matters are to be presumed until the contrary is proved (Section 98).

The books to be kept need not be signed at the meeting to which the entries relate or at any meeting (*Miles* v. *Bough*, 1842, 3 Q.B. 845). Where the minutes of an adjourned meeting were signed by the chairman, but not the minutes of the original meeting, both sets of minutes were regarded as admissible in evidence under the Section (*Inglis* v. *Great Northern Rly. Co.*, 1852, 1 Macq. H.L. 112).

§ 7. **Extraordinary Meetings.** Every general meeting of the shareholders, other than an ordinary general meeting, is an extraordinary meeting. Such meetings may be convened by the directors at such times as they think fit (Section 68).

An extraordinary meeting cannot enter upon any business not set forth in the notice upon which it has been convened (Section 69).

(1) Requisition of Extraordinary Meeting.

Section 70 enacts that it shall be lawful for the prescribed number of shareholders holding in the aggregate shares to the prescribed

amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company, and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual place of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders, and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days' public notice thereof."

(2) **Constitution and Registration.**

Subject to what has been stated as to extraordinary general meetings, the provisions as to convention, chairman, voting and so on which have been noticed in § 6 in relation to ordinary meetings apply, *mutatis mutandis*, to extraordinary meetings.

§ 8. **Resolutions and Powers of General Meetings.** Every proposition at a general meeting must be determined by the majority of the parties present in person or by proxy. In the absence of specific provision in the special Act, a simple majority will suffice unless the *Companies Clauses Consolidation Act*, 1845, requires a different majority, as, e.g., in Section 61, where the consent of three-fifths of the votes of the shareholders present in person or by proxy is required for the consolidation of shares into stock. Wherever, under the provisions of the Act or of the special Act, the consent of any particular majority of votes at any meeting of the company is required in order to authorise any proceeding of the company, that particular majority need be proved to exist only in the event of a poll being demanded at such meeting. If a poll is not demanded, a declaration by the chairman that the resolution authorising the proceeding in question has been carried, and an entry to that effect in the book of proceedings of the company, is sufficient authority for that proceeding, without proof of the number or proportion of votes recorded in favour of or against the resolution (Section 80).

While the power of management of a statutory company reposes at large in the directors, certain matters can be transacted only with the authority or concurrence of the shareholders in general meeting. Such matters include:—

(i) Forfeiture of shares (Section 31).
(ii) Borrowing (Sections 38, 39 and 56).
(iii) Variation of number of directors (Section 82).
(iv) Election of directors (Sections 83 and 91).
(v) Election of auditors (Sections 91, 101 and 104).
(vi) Consideration of accounts (Section 118).
(vii) Declaration of dividend (Section 120).

§ 9. Appointment and Powers of Directors.

(1) Number and Quorum.

The number of directors shall be the prescribed number (Section 81), and where the special Act contains authority to increase or reduce the number of directors, the company may, from time to time, in general meeting after due notice increase or reduce the number of directors within the prescribed limits, if any, and determine the order of rotation in which such increased or reduced number shall go out of office, and what number shall be a quorum at their meetings (Section 82).

(2) Election.

The directors appointed by the special Act continue in office, unless otherwise provided, until the first ordinary meeting in the year next after that in which the special Act was passed. At such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special Act, or any number of them, or may elect a new body of directors to supply the places of those not continued in office. The directors appointed by the special Act are eligible for re-election. At the first ordinary meeting to be held every year thereafter, the shareholders present, personally or by proxy, must elect persons to supply the places of the directors then retiring from office, and the persons elected at any such meeting, if not removed or disqualified and not having resigned, shall continue to be directors in their stead (Section 83). This power of appointing directors is vested in the shareholders, so that the directors cannot make a legally effective arrangement whereby other persons are empowered to make such appointment (*James* v. *Eve*, 1873, L.R. 6 H.L. 335).

If at any meeting at which an election of directors ought to take place the prescribed quorum is not present within one hour of the time appointed for the meeting, no election of directors shall be made, but the meeting must stand adjourned to the following day at the same time and place. If at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for

the meeting, the existing directors are to continue to act, and they retain their powers until new directors are appointed at the first ordinary meeting of the following year (Section 84).

(3) Qualification and Disqualification.

No person can be a director unless he is a shareholder holding the prescribed number (if any) of shares. Such holding is an absolute condition precedent to qualify for election as a director (*Channel Collieries Trust* v. *Dover, St. Margaret's & Martin Mill Light Rly. Co.*, 1914, 2 Ch. 506).

A person is not capable of being a director if he holds an office or place of trust or profit under the company or is interested in any contract with the company; and, conversely, no director may accept any other office or place of trust or profit under the company, or be interested in any contract with the company, so long as he is a director (Section 85).

If a director at any time subsequently to his election:—

(i) Accepts or continues to hold any other office or place of trust or profit under the company, or,

(ii) Is either directly or indirectly concerned in any contract with the company, or,

(iii) Participates in any manner in the profits of any work to be done for the company, or,

(iv) Ceases to be holder of the prescribed number of shares in the company,

then the office of such director becomes vacant, and thenceforth he must cease to vote or act as a director (Section 86).

The mere fact that a director is a shareholder in or member of a company with which a company incorporated by special Act contracts, does not disqualify such director from continuing in office; but he cannot vote on any question as to any contract with that other company (Section 87).

These qualifying and disqualifying provisions operate only in respect of elected directors, and do not apply to directors appointed by the special Act (*Portal* v. *Emmens*, 1876, 1 C.P.D. 664).

(4) Rotation of Directors.

Subject to the provisions of Sections 81 and 82, the directors retire from office in rotation, the individuals to retire in each instance being determined by ballot among the directors unless they agree otherwise. The rotation is in accordance with the following rules:—

(i) At the end of the first year after the first election of directors,

the prescribed number, and, if no number be prescribed, one-third of such directors, shall go out of office;

(ii) At the end of the second year, the prescribed number, and, if no number be prescribed, one-half of the remaining number of such directors, shall go out of office;

(iii) At the end of the third year, the prescribed number, and, if no number be prescribed, the remainder of such directors, shall go out of office.

In each instance the places of the retiring directors must be filled by an equal number of qualified shareholders (Section 88).

At the first ordinary meeting in every year after the first, the prescribed number, or, if no number is prescribed, one-third of the directors, being those who have been longest in office, must go out of office and their places similarly filled. Every director so retiring from office may be re-elected immediately or at any future time, and after such re-election is to be considered with reference to the going out by rotation, as a new director (*ibid.*).

Where the prescribed number of directors is not divisible by three, and the number of directors to retire is not prescribed the directors must in each case determine what number of directors, as nearly one-third as may be, shall go out of office in three years (*ibid.*).

An occasional vacancy resulting from death, resignation, disqualification or any other cause, even going out of office by rotation, may be filled by the remaining directors (Section 89). A sole continuing director may exercise this power of filling a casual vacancy (*Channel Collieries Trust* v. *Dover, St. Margaret's & Martin Mill Light Rly. Co.*, 1914, 2 Ch. 506). A director so appointed remains in office for the residue of the term of his predecessor.

(5) **Powers.**

It is provided by Section 90 that the directors shall have the management and superintendence of the affairs of the company, and may lawfully exercise all the powers of the company, except as to such matters which are directed by the Act or the special Act to be transacted by a general meeting of the company (*vide supra*). The powers so exercisable must be exercised in accordance with the provisions of the Act and the special Act, and subject also to the control and regulation of any general meeting specially convened for the purpose. The decision of such a meeting will not, however, render invalid any act done by the directors prior to any resolution passed thereat (*ibid.*).

The directors must act together as a board. Assents independently given are not sufficient (*D'Arcy* v. *Tamar, Kit Hill & Callington Rly. Co.*, 1867, L.R. 2 Exch. 158; and see p. 163).

§ 10. **Meetings of Directors.** The directors may hold meetings at such times as they may appoint for the purpose, and they may meet and adjourn as they think proper, from time to time and from place to place (Section 92).

(1) Convention and Constitution.

At any time any two of the directors may require the secretary to call a meeting of the directors. In order to constitute a quorum, there must be present the prescribed number of directors, or, where no number is prescribed, at least one-third of the directors (*ibid.*).

(2) Chairman.

At the first meeting of directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, those present at the meeting are required to choose one of the directors to act as chairman of the directors for the year following such choice, and may also, if they think fit, choose another director to act as deputy chairman for the same period (Section 93). If the chairman or deputy chairman should die, or resign, or cease to be a director, or otherwise become disqualified from acting, the directors present at the meeting next after the occurrence of the vacancy must choose some other of the directors to fill the vacancy (*ibid.*); a chairman or deputy chairman so appointed continues in office for the residue of the term of the person replaced (*ibid.*).

If at any meeting of the directors, neither the chairman nor the deputy chairman is present, the directors present are required to choose some one of their number present to be the chairman (Section 94)

(3) Resolutions.

All questions at a meeting of directors are to be determined by the majority of votes of the directors present. In the case of an equal division of votes, the chairman has a casting vote in addition to his vote as one of the directors (Section 92).

(4) Minutes.

The requirements of Section 98 (see § 6 [10]) apply also to meetings of directors.

§ 11. **Committees.** It is lawful for the directors to appoint one or more committees consisting of such number of directors as they think fit, within the prescribed limits if any, and they may grant to such committees power to do on behalf of the company such acts as the directors could lawfully do (Section 95).

Where powers are so delegated, the committees may meet from time to time and may adjourn from place to place as they think proper, for carrying into effect the purposes of their appointment (Section 96).

No committee can exercise the powers delegated to it except at a meeting at which the prescribed quorum is present (*ibid.*). If no quorum is prescribed the quorum is fixed by the general body of directors.

One of the members must be appointed chairman by the members present at any meeting of a committee.

Questions are determined by a majority of votes of the members present, and in the case of an equal division of votes, the chairman has a casting vote.

§ 12. **Effect of Informality.** All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it may afterwards be discovered that there was a defect in the appointment of any such director, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director (Section 99).

CHAPTER XXIII

MEETINGS IN BANKRUPTCY

PROCEEDINGS in bankruptcy are governed by the *Bankruptcy Act*, 1914, and the *Bankruptcy (Amendment) Act*, 1926. By Section 132 (1) of the principal Act (i.e., the Act of 1914) the Lord Chancellor is empowered, with the concurrence of the President of the Board of Trade, to make general rules for carrying the objects of the Act into effect. A code of procedure and administrative regulations has been promulgated in pursuance of this power and is cited as the "Bankruptcy Rules, 1915." Various amendments and modifications of these rules have been made from time to time since they were first enacted.

§ 1. **Outline of Bankruptcy Procedure.** The interests with which bankruptcy proceedings are concerned are those of the creditors of the bankrupt on the one hand, and of the debtor himself on the other. In furtherance of the interests of creditors and for the due protection of their rights in the assets of a bankrupt, provision is made in the *Bankruptcy Act*, 1914, and the Rules made thereunder, for the holding of meetings of the general body of creditors, and also of an elected body representative of their interests and called a committee of inspection. In order to comprehend the functions of these meetings and to appreciate their bearing upon bankruptcy proceedings, it is necessary to consider shortly the general course of those proceedings.

A debtor is deemed *prima facie* to be insolvent when he has committed any one of the eight "acts of bankruptcy" defined in Section 1 of the Act of 1914. These acts of bankruptcy may be described as statutory tests of insolvency, and while not conclusive of that condition, they provide the first step in seeking an adjudication order in bankruptcy against a debtor. By Section 4 of the *Bankruptcy Act*, a creditor who is duly qualified so to do by, *inter alia*, having a liquidated claim for £50 or more against his debtor, may present a bankruptcy petition against that debtor. The petition must be presented to the appropriate court having bankruptcy jurisdiction, and must be founded upon an act of bankruptcy committed by the debtor within the three months immediately prior to the presentation of the petition. If, on the hearing of the petition, it appears that the debtor is in fact insolvent, the court will, in ordinary circumstances, make a "receiving order" against the

debtor. On the making of this order the Official Receiver becomes receiver or custodian of the debtor's property and is charged with the function of preserving it for the benefit of the creditors. There follow various administrative proceedings prescribed by the *Bankruptcy Act*, including the submission by the debtor of a statement of his affairs, his public examination by the court, the convention by the Official Receiver of a first meeting of the creditors and the appointment by that meeting of a trustee in bankruptcy. The trustee will represent the interests of creditors and, when the actual order of adjudication in bankruptcy is made against the debtor, becomes invested with the title or ownership in the debtor's property for the purpose of realising it and distributing the proceeds among the creditors in satisfaction, so far as may be, of their respective claims. For the better protection of the creditors, the trustee's administration is generally made subject to the control and supervision of a committee of inspection appointed by the creditors.

Creditors establish their claims by " proving " them to the satisfaction of the trustee. This consists in lodging a " proof of debt " comprising any vouchers which substantiate the claim and an affidavit affirming the existence of the debt. The trustee recognises the validity of a claim by " admitting the proof."

§ 2. **Meetings of Creditors.** The first meeting of creditors in bankruptcy is statutorily required. It is provided by Section 13 (1) of the *Bankruptcy Act*, 1914, that " as soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt and generally as to the mode of dealing with the debtor's property."

The convention of this meeting and the proceedings thereat are, by Section 13 (2), made subject to the rules in the First Schedule to the Act. (These rules are to be distinguished from the general rules referred to above.) The First Schedule is reproduced here in its entirety.

THE FIRST SCHEDULE

Meetings of Creditors

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving out

less than six clear days notice of the time and place thereof in the *London Gazette* and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this Act.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving

order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum: Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate, or by some other official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Supreme Court.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at

any specified meeting or adjournment thereof on all or any of the following matters:—

(a) For or against any specific proposal for a composition or scheme of arrangement;

(b) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;

(c) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any

remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor; provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

28. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

The function of the first meeting of creditors is, as has been seen, to consider any composition or scheme propounded by the debtor. The meeting will moreover determine whether to appoint a trustee in place of the official receiver, and, if it is decided so to do, will make the appointment. The meeting may also elect a committee of inspection.

Apart from the notice to creditors of the first meeting provided for by clause 2 of the Schedule, the official receiver is required to give three days' notice of the meeting to the debtor. Such notice may be given personally or by post, and the debtor is under a duty to attend whether he receives the notice or not (*Bankruptcy Rules*, R. 240).

If the creditors at the first meeting, or any adjournment thereof, by ordinary resolution resolve that the creditor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved within fourteen days after the conclusion of the public examination of the debtor or such further time as the court may allow, the court must adjudge the debtor bankrupt (Section 18 [1]).

In the proceedings which ensue, further meetings of creditors may be held in accordance with clause 6 of the First Schedule.

A meeting ordered by the court to be convened is summoned as the court may direct. In default of any specific direction, the registrar of the court must transmit to the trustee in bankruptcy (or, if there is no trustee, to the official receiver) a sealed copy of the order requiring the meeting to be summoned. The trustee or official receiver must send a copy of the order to each creditor not less than seven days before such meeting at the address given in his proof, or where he has not lodged a proof, at the address given in the list of creditors by the debtor, or such other address as may be known to the trustee or the official receiver (*Bankruptcy Rules*, R. 15).

As to meetings summoned by the trustee, Section 79 (2) enacts that he may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors by resolution, either at the meeting appointing the trustee or otherwise, may direct;

and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days.

There is a proviso to the effect that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting. The sum so deposited may be repaid out of the estate to the depositor if the creditors or the court so direct.

Rules 242 to 249 prescribe the regulations applicable to meetings subsequent to the first. By Rule 242, the notices of such meetings shall be issued to creditors by the official receiver or the trustee. Where no special time is prescribed, the notices shall be sent off not less than three days before the day of the meeting.

Under Rule 243, the validity of a meeting is not affected, unless the Court otherwise orders, by the fact that some creditors have not received the notices sent to them.

As to adjournments, Rule 248 requires that the adjourned meeting shall be held in the same place as the original place of meeting, unless in the resolution for the adjournment, another place is specified.

§ 3. **Quorum.** By clause 24 of the First Schedule, a meeting is not competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting unless there are present, or represented thereat, at least three creditors or all the creditors if their number does not exceed three.

It will be seen that proxies are to be reckoned in a quorum. In computing a quorum only those creditors entitled to vote at a meeting are counted (*Bankruptcy Rules*, R. 249). This involves that they have duly proved their claims (First Schedule, 8). If only one creditor has proved his debt, he alone may constitute a meeting (*In re Thomas, Ex parte Warner*, 1911, 55 S.J. 482).

§ 4. **Resolutions.** There are three forms of resolutions in bankruptcy proceedings:—

(i) The *ordinary* resolution, which is passed by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors, and voting on the resolution (*Bankruptcy Act*, 1914, Section 167). Wherever the word " resolution " is used in the Act without qualification, an ordinary resolution is meant (*ibid.*). This form of resolution is employed, *inter alia*, to resolve that the debtor be adjudged bankrupt, to appoint a trustee and committee of in-

spection, to fix the trustee's remuneration and for giving him general directions.

(ii) The *special* resolution, decided by a majority in number and three-fourths in value of the creditors present personally or by proxy, at a meeting of creditors and voting on the resolution (*ibid.*). This type of resolution is utilised only in three cases, namely:—

(a) to remove the official receiver and to appoint a trustee in his place in a small bankruptcy, i.e., where the assets do not exceed £300;

(b) to make an allowance to the debtor out of the assets otherwise than in cash;

(c) to call upon the official receiver to remove a special manager, i.e., a person appointed to carry on the business of the debtor.

(iii) *The resolution to approve a composition or a scheme of arrangement.* This resolution, as the name suggests, has a unique application. It is required to be used only in connection with the acceptance of a proposal made by a debtor for a composition in satisfaction of his debts or a scheme of arrangement of his affairs. Before the necessary sanction of the court can be sought, the creditors must at a meeting resolve to accept the proposal by a majority in number and three-fourths in value of *all the creditors who have proved* (*Bankruptcy Act*, 1914, Section 16 [2]). Creditors who do not attend the meeting or who attend but do not vote thereat are in effect counted as having voted against the resolution. Personal attendance is not required, for a creditor may vote by proxy (First Schedule, 15, 19) and he may register his vote by a letter in the prescribed form, provided it is sent so as to reach the official receiver not later than the day preceding the meeting.

§ 5. **Voting and Proxies.** A vote may be given personally or by proxy (First Schedule, 15). In the case of a resolution to approve a composition or scheme of arrangement, a voting letter in the prescribed form is a permissible alternative (Section 16 [4]).

In computing the votes upon an ordinary resolution, the value or amount of a creditor claim is the sole criterion of his voting power. A numerical preponderance of votes is not required. This rule simply recognises the fact that the interest of the creditors is not measured by reference to their number, but by the extent of their claims against the debtor's estate.

No creditor can vote unless he has proved a debt provable in the bankruptcy and has duly lodged his proof before the time appointed

for the meeting (First Schedule, 8); but the chairman of a meeting has power to admit or reject a proof for the purpose of voting (*ibid.*, R. 14). If he is in doubt whether the proof of the creditor should be admitted or rejected, he should mark the proof as objected to, but should allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained (*ibid.*). Appeal may be made to the Court against the chairman's decision.

No creditor can vote at a meeting in respect of an unliquidated or contingent debt, or any debt the value of which is not ascertained (*ibid.*, R. 9).

Where a proxy is given, it may be either general or special. Either form may be issued by the official receiver or by the trustee in bankruptcy where he has been appointed. Proxy forms are issued in blank, and must be completed in the handwriting of the donor of the proxy, or of a manager or clerk or other person in his regular employment, or of a commissioner to administer oaths (*ibid.*, R. 16). A proxy must be signed, but not necessarily by the creditor giving it; Rule 265 of the *Bankruptcy Rules* provides that the signature may be that of any person in the employ of the donor having a written authority to sign for him, or of an agent authorised in writing where the creditor is abroad. The signature on the proxy must be witnessed, but not by the donee of the proxy (*Re Parrott, Ex parte Cullen*, 1891, 2 Q.B. 151).

The proxy of a creditor who is blind or incapable of writing may be accepted if such creditor has attached his signature or mark in the presence of a witness, who has added his signature, description and residence, provided that all insertions are in the handwriting of the witness, who must certify that they were made by him at the request of, and in the presence of, the creditor before he attached his signature or mark (*Bankruptcy Rules*, R. 266).

No person who is a minor can be appointed a general or a special proxy (*ibid.*, R. 267).

A special proxy may be given to any person not a minor. It empowers the donee to vote,

(i) at a specified meeting or an adjournment thereof; or

(ii) for or against any specified proposal for a composition or scheme of arrangement; or

(iii) for or against the appointment of any specified person as trustee at a specified rate of remuneration; or

(iv) for or against the appointment of any specified person as a member of the committee of inspection; or

(v) on all questions relating to any matter other than those above referred to, arising at any specified meeting or an adjournment thereof (First Schedule, R. 19).

A general proxy can be given by a creditor only to,

(i) his manager or clerk or a person in his regular employment, the proxy form exhibiting the relation in which the donee stands to the creditor (*ibid.*, R. 18); or

(ii) the official receiver (*ibid.*, R. 22), who may, if he cannot conveniently attend, by writing appoint a deputy to use the proxy (*Bankruptcy Rules*, R. 314).

A proxy must be lodged with the official receiver or trustee not later than four o'clock on the day before the meeting or adjourned meeting at which it is to be used (*ibid.*, R. 264). When it has been used, the proxy must be filed.

§ 6. **Minutes.** Under the First Schedule, R. 26, the chairman of every meeting of creditors in bankruptcy must cause minutes of the proceedings at the meetings to be drawn up and entered in a book kept for that purpose. The minutes must be signed by him or by the chairman at the next ensuing meeting.

By Section 138 (1) of the *Bankruptcy Act*, 1914, a minute of proceedings at a meeting of creditors, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

Moreover, until the contrary is proved, every meeting of creditors in respect of the proceedings of which a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat, to have been duly passed or had (*ibid.*, Section 138 [2]).

The official receiver or the trustee is required to send to the registrar of the court in which bankruptcy proceedings are pending a copy, certified by him, of every resolution of a meeting of creditors (*Bankruptcy Rules*, R. 247).

§ 7. **Committee of Inspection.** Where the number of creditors in a bankruptcy is large, it is clearly desirable that a compact body be set up to safeguard and to further the interests of the creditors at large. Accordingly, it is provided in Section 20 of the *Bankruptcy Act*, 1914, that the creditors qualified to vote may, at their first or any subsequent meeting, appoint by resolution a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

The constitution and composition of the committee are governed

by the same Section, which enacts further that they shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications:—

(i) that of being a creditor or the holder of a general proxy or power of attorney from a creditor, provided that no creditor, and no holder of a general proxy or general power of attorney from a creditor, shall be qualified to act until the creditor has proved his debt and the proof has been admitted; or

(ii) that of being a person to whom a creditor intends to give a general proxy or general power of attorney; provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or general power of attorney and until the creditor has proved his debt and the proof has been admitted.

The committee must meet at such times as they may from time to time appoint, and failing such appointment at least once a month. The trustee or any member of the committee may also call a meeting as and when he thinks necessary.

The committee may act by a majority of their members present at a meeting. Hence the only form of resolution applicable to deliberations of the committee of inspection is an ordinary resolution passed by a simple majority *in number of those present.*

A quorum consists in a majority of the committee at any time, and will accordingly diminish in number as vacancies occur. It is expressly provided (Section 20 [9]) that the continuing members of the committee, so long as there be not less than two, may act notwithstanding any vacancy in their body.

A member vacates his office if:—

(a) he delivers his written and signed resignation to the trustee; or,

(b) he becomes bankrupt or compounds or arranges with his creditors,

(c) he is absent from five consecutive meetings of the committee,

(d) he is removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting (Section 20 [5, 6, 7]).

When a vacancy occurs, the trustee is required forthwith to summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other eligible person to fill the vacancy (Section 20 [8]). Wherever the number of members of the committee of inspection is for the time being less

than five, the creditors may increase that number so long as the limit of five is not exceeded.

Any act done by a member of the committee of inspection in good faith is not vitiated by reason of any defect or irregularity in the appointment or election of that member (Section 147).

Formal defects or irregularities in bankruptcy proceedings generally will not invalidate those proceedings, unless the court before which an objection is made to the proceedings is of opinion that substantial injustice has been caused, and that the injustice cannot be remedied by any order of the court (*ibid.*).

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